SENT TO SECRETARY OF STATE
(May 25, 1995)

S.J.R. 7

SENT TO COMPTROLLER
(May 25, 1995)

S.B. 407
S.B. 1379

SENT TO GOVERNOR
(May 25, 1995)

S.C.R. 38	**S.B. 400**	**S.B. 1046**	**S.B. 1435**
S.C.R. 124	**S.B. 413**	**S.B. 1076**	**S.B. 1437**
S.C.R. 146	**S.B. 428**	**S.B. 1092**	**S.B. 1514**
S.C.R. 147	**S.B. 472**	**S.B. 1175**	**S.B. 1535**
S.C.R. 148	**S.B. 512**	**S.B. 1177**	**S.B. 1549**
S.C.R. 149	**S.B. 519**	**S.B. 1178**	**S.B. 1554**
S.C.R. 158	**S.B. 525**	**S.B. 1179**	**S.B. 1601**
S.B. 10	**S.B. 585**	**S.B. 1182**	**S.B. 1632**
S.B. 46	**S.B. 600**	**S.B. 1197**	**S.B. 1647**
S.B. 47	**S.B. 601**	**S.B. 1217**	**S.B. 1657**
S.B. 89	**S.B. 602**	**S.B. 1222**	**S.B. 1658**
S.B. 124	**S.B. 634**	**S.B. 1252**	**S.B. 1670**
S.B. 126	**S.B. 636**	**S.B. 1276**	**S.B. 1681**
S.B. 129	**S.B. 698**	**S.B. 1291**	**S.B. 1691**
S.B. 131	**S.B. 871**	**S.B. 1301**	**S.B. 1694**
S.B. 133	**S.B. 904**	**S.B. 1314**	**S.B. 1695**
S.B. 135	**S.B. 914**	**S.B. 1337**	**S.B. 1701**
S.B. 182	**S.B. 918**	**S.B. 1338**	**S.B. 1704**
S.B. 224	**S.B. 919**	**S.B. 1357**	**S.B. 1705**
S.B. 225	**S.B. 944**	**S.B. 1363**	**S.B. 1709**
S.B. 338	**S.B. 1017**	**S.B. 1371**	**S.B. 1714**
S.B. 351	**S.B. 1020**	**S.B. 1397**	**S.B. 1720**

EIGHTIETH DAY
(Friday, May 26, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper James Morris offered the invocation as follows:

Our heavenly Father, we are called this morning to our respective assignments and to the privilege of a new day when we can be of service to others. We pray this day might begin and end with Your divine guidance. Now, in the final days of this session, we offer thanks for the steady leadership and for each Member who these past months has shown the courage and will to challenge, the knowledge and confidence to make change, and the wisdom and strength to lead. We offer this prayer of thanks for their dedication to making Texas better. Bless, we pray, the work of the Senate this day. In Your name we pray. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

HOUSE RESOLUTIONS ON FIRST READING

The following resolutions received from the House were read first time and referred to the committees indicated:

H.C.R. 78 to Committee on State Affairs.
H.C.R. 113 to Committee on State Affairs.
H.C.R. 137 to Committee on Health and Human Services.
H.C.R. 139 to Committee on Administration.
H.C.R. 173 to Committee on Natural Resources.
H.C.R. 185 to Committee on State Affairs.
H.C.R. 207 to Committee on International Relations, Trade, and Technology.

BILLS AND RESOLUTION SIGNED

The President announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

S.J.R. 1	**S.B. 437**	**S.B. 644**
S.B. 9	**S.B. 488**	**S.B. 676**
S.B. 20	**S.B. 533**	**S.B. 956**
S.B. 94	**S.B. 538**	**S.B. 1016**
S.B. 123	**S.B. 563**	**S.B. 1037**
S.B. 206	**S.B. 597**	**S.B. 1059**
S.B. 212	**S.B. 609**	**S.B. 1660**
S.B. 291	**S.B. 643**	**S.B. 1671**

SENATE RESOLUTION 1194

Senator Brown offered the following resolution:

S.R. 1194, Recognizing Pearland Memorial Post 7109 of the Veterans of Foreign Wars and the Ladies Auxiliary on their 25th anniversary.

The resolution was read and was adopted by a viva voce vote.

(Senator Truan in Chair)

(President in Chair)

SENATE RESOLUTION 1265

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 74th Legislature, Regular Session, 1995, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **H.B. 1863** to consider and take action on the following specific matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add to Section 31.031(d), Human Resources Code, SECTION 2.04 of the bill, "or a child who is not enrolled in public school", so that the subsection reads as follows:

"(d) The department shall require the applicant to provide proof to the department that each child five years of age or younger, or a child who is not enrolled in public school, for whom the applicant will receive assistance:"

Explanation: Proof would only have to be provided for children younger than five years of age or not enrolled in a public school because the public schools require proof of immunization.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend text in Section 31.0031(d)(4), Human Resources Code, SECTION 2.02 of the bill, to read as follows:

"(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become self-sufficient by:"

Explanation: This is a technical amendment to change the tense of the verb from past tense to present tense.

(3) Senate Rule 12.03(3) is suspended to permit the committee to add the following text to the end of Section 31.0031(d)(8), Human Resources Code, SECTION 2.02 of the bill, to read as follows: ", as determined by the needs assessment."

Explanation: This addition removes the requirement that all financial aid recipients attend parenting skills classes because not all persons who apply for assistance need the classes.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend text in Section 31.0033(a), Human Resources Code, SECTION 2.02 of the bill, to read as follows: "the person receiving the financial assistance may request a hearing to show good cause for noncompliance not later than the 13th day after the date on which notice is received under Section 31.0032."

Explanation: This amendment allows a recipient of financial assistance more time to appeal penalties or sanctions imposed by the department under Section 31.0032, Human Resources Code.

(5) Senate Rule 12.03(1) is suspended to permit the committee to amend text in Section 31.0034(3), Human Resources Code, SECTION 2.02 of the bill, to read as follows:

"(3) the number of persons who are exempt from participation under Section 31.012(c);".

Explanation: This technical change is necessary to provide the correct citation to Section 31.012, Human Resources Code.

(6) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 31.0034(5)(A), Human Resources Code, as added by SECTION 2.02 of the bill, by striking the words "or marriage".

Explanation: The Department of Human Services usually is not informed by a financial aid recipient that the person no longer needs assistance because the person has married.

(7) Senate Rule 12.03(1) is suspended to permit the committee to amend SECTION 2.02(c) of the bill by changing the deadline for requiring all recipients to sign a responsibility agreement from January 1, 1996, to September 1, 1996.

Explanation: This change is necessary to enable the Texas Department of Human Services to allow a recipient of financial assistance who applied for financial assistance before the effective date of this Act to sign the responsibility agreement when the person returns to the department for the person's regularly scheduled follow-up visit. The fiscal note will increase if the date is not changed.

(8) Senate Rule 12.03(4) is suspended to permit the committee to add the following text to SECTION 4.01 of the bill:

"(d) On the transfer of the program under Section 31.012, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.012, Human Resources Code, as amended by this section."

Explanation: Articles 4 and 11 of the bill amend the same sections of the Human Resources Code. This amendment is needed to allow those articles to work together when the workforce programs are consolidated.

(9) Senate Rule 12.03(4) is suspended to permit the committee to add the following text to SECTION 4.02 of the bill:

"(c) On the transfer of the program under Section 31.0125, Human Resources Code, to the Texas Workforce Commission, the Texas Workforce Commission shall perform all duties assigned to the Texas Department of Human Services under Section 31.0125, Human Resources Code, as amended by this section."

Explanation: Articles 4 and 11 of the bill amend the same sections of the Human Resources Code. This amendment is needed to allow those articles to work together when the workforce programs are consolidated.

(10) Senate Rule 12.03(2) is suspended to permit the committee to strike the following text in SECTION 7.07(c)(2) of the bill: ", provided that the assistance may not be provided more than twice in one year unless the department has developed other appropriate limitations"

Explanation: This change is necessary to conform to federal law that allows an emergency assistance payment only once a year.

(11) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 33.002(g), Human Resources Code, in SECTION 8.09 of the bill, to read as follows:

"(g) The department may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the department determines that the modification is necessary to reduce fraud in the food stamp program."

Explanation: This change is necessary because the federal rules do not include emergency food stamps in the state's error rate.

(12) Senate Rule 12.03(4) is suspended to permit the committee to add the following text to Section 10, Article 4413(502), Revised Statutes, in SECTION 9.01 of the bill:

"(e) Not later than January 1 of each odd-numbered year, the commission shall begin formal discussions with each health and human services agency regarding that agency's strategic plan or biennial update."

Explanation: This change is necessary to provide a set time frame within which the Health and Human Services Commission and its member agencies have to work on strategic plans and updates.

(13) Senate Rule 12.03(4) is suspended to permit the committee to add an amendment to Section 12, Article 4413(502), Revised Statutes, in SECTION 9.02 of the bill, to read as follows:

Sec. 12. PUBLIC INPUT [~~INTEREST~~] INFORMATION AND COMPLAINTS. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(b) The commission shall develop and implement routine and ongoing mechanisms, in accessible formats:

(1) to receive consumer input;

(2) to involve consumers in planning, delivery, and evaluation of programs and services under the jurisdiction of the commission; and

(3) to communicate to the public the input received by the commission under this section and actions taken in response to that input.

(c) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(d) [~~(c)~~] The commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the commission;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the commission; or

(3) in a bill for service provided by a person or entity regulated by the commission.

(e) [~~(d)~~] The commission shall keep an information file about each complaint filed with the commission relating to:

(1) a license holder or entity regulated by the commission; or

(2) a service delivered by the commission.

(f) [~~(c)~~] If a written complaint is filed with the commission relating to a license holder or entity regulated by the commission or a service delivered by the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Explanation: This addition is necessary to ensure that the Health and Human Services Commission processes information received from the public in an orderly fashion and that the public is informed of commission actions.

(14) Senate Rule 12.03(4) is suspended to permit the committee to amend Article 4413(502), Revised Statutes, in SECTION 9.04 of the bill, by adding Section 13C to read as follows:

Sec. 13C. AUTOMATED SYSTEMS. A health and human services agency may not submit its plans to the Department of Information Resources under Subchapter E, Chapter 2054, Government Code, until those plans are approved by the commission.

Explanation: This addition is necessary to allow the Health and Human Services Commission and its member agencies to deliver human services more efficiently.

(15) Senate Rule 12.03(4) is suspended to permit the committee to add an amendment to Section 14(a), Article 4413(502), Revised Statutes, in SECTION 9.05 of the bill, to read as follows:

(a) The commissioner shall:

(1) arbitrate and render the [~~a~~] final decision on interagency disputes;

(2) facilitate and enforce coordinated planning and delivery of health and human services, including compliance with the coordinated strategic plan, co-location of services, integrated intake, and coordinated referral and case management;

(3) request budget execution for the transfer of funds from one agency to another;

(4) establish a federal health and human services funds management system and maximize the availability of those funds;

(5) develop with the Department of Information Resources automation standards for computer systems to enable health and human services agencies to share pertinent data;

(6) establish and enforce uniform regional boundaries for all health and human services agencies;

(7) carry out statewide health and human services needs surveys and forecasting;

(8) perform independent special outcome evaluations of health and human services programs and activities;

(9) adopt rules necessary to carry out the commission's duties under this Act; and

(10) review and comment on health and human services agency formulas [~~develop a formula~~] for the distribution of funds to ensure that

the formulas, to the extent permitted by federal law, consider [~~considers~~] such need factors as client base, population, and economic and geographic factors within the regions of the state.

Explanation: This amendment is necessary to ensure adequate distribution of federal funds.

(16) Senate Rule 12.03(4) is suspended to permit the committee to amend Article 4413(502), Revised Statutes, in SECTION 9.06 of the bill, by adding Section 14A to read as follows:

Sec. 14A. DELIVERY OF SERVICES. To integrate and streamline service delivery and facilitate access to services, the commissioner may request a health and human services agency to take a specific action and may recommend the manner in which the streamlining is to be accomplished, including requesting each health and human services agency to:

(1) simplify agency procedures;

(2) automate agency procedures;

(3) coordinate service planning and management tasks between and among health and human services agencies;

(4) reallocate staff resources;

(5) adopt rules;

(6) amend, waive, or repeal existing rules; and

(7) take other necessary actions.

Explanation: This amendment is necessary to direct the human services agencies in the integration and streamlining of service delivery and to facilitate public access to those services.

(17) Senate Rule 12.03(4) is suspended to permit the committee to add SECTION 9.12(c) of the bill to read as follows:

"(c) The commission shall examine cost-effective methods to address:

(1) fraud in the assistance programs; and

(2) the error rate in eligibility determination."

Explanation: This amendment is necessary to assist the Health and Human Services Commission to address fraud and error in the welfare system.

(18) Senate Rule 12.03(4) is suspended to permit the committee to amend SECTION 9.14 of the bill by adding text to read as follows:

"Each health and human services agency shall enter into agreements as described by Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), and Article 1118z, Revised Statutes, to expand transportation services for persons receiving assistance for services under a federal program administered by that agency."

Explanation: This amendment is necessary because transportation is a support service under Section 31.010, Human Resources Code, and this will allow local transportation funds to be used to draw down more federal transportation funds.

(19) Senate Rule 12.03(4) is suspended to permit the committee to add SECTION 9.15 of the bill to read as follows:

SECTION 9.15. APPLICATION. The changes in law made by this article apply beginning with appropriations made for the fiscal year beginning September 1, 1995.

Explanation: This is a technical amendment to provide guidance on the applicability of the article.

(20) Senate Rule 12.03(1) is suspended to permit the committee to amend SECTION headings in Article 10 of the bill to read as follows:

SECTION 10.02. SPOUSAL MAINTENANCE.

SECTION 10.03. TRANSITION.

Explanation: The headings were added to conform Article 10 to the style of the first nine articles of the bill.

(21) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 3.9603(12), in SECTION 10.02 of the bill to read as follows:

"(12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code."

Explanation: This is a technical amendment to provide the correct cite to the Labor Code.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1258

Senator Ratliff offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 74th Legislature, Regular Session, 1995, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 1** to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 1.003, Education Code, to read as follows:

Sec. 1.003. THE FLYING OF THE UNITED STATES AND TEXAS FLAGS. On all regular school days, every school and other educational institution to which this code applies shall fly the United States and Texas flags.

Explanation: This change is necessary to require schools and educational institutions to fly the United States flag.

(2) Senate Rule 12.03(1) is suspended to permit the committee to delete "vocational" and substitute "career and technology" in Section 5.001(2), Education Code.

Explanation: The language is changed to conform with terminology used in federal law.

(3) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 7.056(e)(3)(A), Education Code (Section 7.104(e)(1), Education Code, in engrossed version), to read as follows:

(e) Except as provided by Subsection (f), a school campus or district may not receive an exemption or waiver under this section from:

. . .

(3) a requirement, restriction, or prohibition relating to:

(A) essential knowledge or skills under Section 28.001 or minimum graduation requirements under Section 28.025;

Explanation: This change is necessary to conform to changes made to the commissioner of education's and State Board of Education's duties relating to curriculum requirements under Subchapter A, Chapter 28.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 7.056(e)(3)(B), Education Code (Section 7.104(e)(2), Education Code, in engrossed version), to read as follows:

(e) Except as provided by Subsection (f), a school campus or district may not receive an exemption or waiver under this section from:

. . .

(3) a requirement, restriction, or prohibition relating to:

. . .

(B) public school accountability as provided by Subchapters B, C, D, and G, Chapter 39;

Explanation: This change is necessary to conform to changes made to Chapter 39, relating to the applicability of that chapter to school districts operating under a charter.

(5) Senate Rule 12.03(1) is suspended to permit the committee to substitute "purchasing" for "competitive bidding" in Section 7.056(e)(3)(E), Education Code (Section 7.104(e)(12), Education Code, in engrossed version).

Explanation: This change is necessary to conform to Subchapter B, Chapter 44, which pertains not only to competitive bidding but also to purchasing by other means.

(6) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 7.056(f)(3)(A), Education Code (Section 7.104(f)(2), Education Code, in engrossed version), to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.131 may receive an exemption or waiver under this section from any law or rule other than:

. . .

(3) a requirement, restriction, or prohibition imposed by state law or rule relating to:

(A) public school accountability as provided by Subchapters B, C, D, and G, Chapter 39; or . . . .

Explanation: This change is necessary to conform to changes made to Chapter 39, relating to the applicability of that chapter to school districts operating under a charter.

(7) Senate Rule 12.03(3) is suspended to permit the committee to add text in Section 7.056(f)(4), Education Code (Section 7.104(f), Education Code, in engrossed version), to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.131 may receive an exemption or waiver under this section from any law or rule other than:

. . .

(4) textbook selection under Chapter 31.

Explanation: This change is necessary to prohibit a school district or campus that is required to develop and impiement a student achievement improvement plan from receiving an exemption or waiver from requirements regarding textbook selection.

(8) Senate Rule 12.03(3) is suspended to permit the committee to add text in Section 7.057(b), Education Code (Section 7.105(b), Education Code, in engrossed version), to read as follows:

(b) Except as provided by Subsection (c), the commissioner, after due notice to the parties interested, shall hold a hearing and issue a decision without cost to the parties involved. In conducting a hearing under this subsection, the commissioner has the same authority relating to discovery and conduct of a hearing as an independent hearing examiner has under Subchapter F, Chapter 21. This section does not deprive any party of any legal remedy.

Explanation: This change is necessary to clarify the authority of the commissioner in conducting a hearing.

(9) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 7.105, Education Code (Section 7.055, Education Code, in engrossed version), to read as follows:

Sec. 7.105. COMPENSATION AND REIMBURSEMENT. (a) A member of the board is not entitled to receive compensation.

(b) A member of the board is entitled to reimbursement of the member's expenses as provided by law.

Explanation: This change is necessary because the reference to reimbursement of expenses as provided by law includes the specific instances in which reimbursement is permitted as provided by the senate and house versions of the bill.

(10) Senate Rule 12.03(1) is suspended to permit the committee to strike references in Section 7.109, Education Code (Section 7.061, Education Code, in engrossed version), to the "State Board for Career and Technical Education" and substitute references to the "State Board for Career and Technology Education."

Explanation: This change is necessary to conform to language used in federal law.

(11) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 11.051(c), Education Code, to read as follows:

A board of trustees that votes to increase its membership must consider whether the district would benefit from also adopting a single-member election system under Section 11.052.

Explanation: This change is necessary to require a board of trustees that decides to increase its membership to consider the benefits of adopting single-member trustee districts.

(12) Senate Rule 12.03(4) is suspended to permit the committee to add Subdivision (13) to Section 11.158(a), Education Code (Section 12.109(a), Education Code, in engrossed version; Section 11.108(a), Education Code, in House special printing), to read as follows:

(13) a fee for a course offered during summer school, except that the board may charge a fee for a course required for graduation only if the course is offered without a fee during the regular school year.

Explanation: This change is necessary to allow the board of trustees of an independent school district to continue to charge a fee for certain summer school courses. Under current law boards may charge the fee based on a rule adopted by the State Board of Education under Section 20.53(c), Education Code, which conveys broad authority for rules regarding fees. Current Section 20.53(c) is omitted from **S.B. 1**. As a result, specific authority for the particular fee is necessary.

(13) Senate Rule 12.03(1) is suspended to permit the committee to delete "vocational-technical" and substitute "career and technology" in Section 11.158(g), Education Code (Section 12.109(f), Education Code, in engrossed version; Section 11.108(g), Education Code, in House special printing).

Explanation: The language is changed to conform with terminology used in federal law.

(14) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 11.159(a), Education Code (Section 12.110(a), Education Code, in engrossed version; Section 11.109, Education Code, in House special printing), to read as follows:

(a) The State Board of Education shall provide a training course for independent school district trustees to be offered by the regional education service centers. Registration for a course must be open to any interested person, including current and prospective board members, and the state board may prescribe a registration fee designed to offset the costs of providing that course.

Explanation: This change is necessary to authorize regional education service centers to be the sole provider of training courses designed by the State Board of Education for members of boards of trustees.

(15) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.003, Education Code, to read as follows:

Sec. 12.003. AUTHORITY OF BOARD OF TRUSTEES TO GRANT OTHER CHARTERS. This chapter does not limit the authority of the board of trustees of a school district to grant a charter to a campus or program to operate in accordance with the other provisions of this title and rules adopted under those provisions.

Explanation: This change is necessary to clarify that the board of trustees of a school district can create a "charter school" on its own, but such a school is not exempt from Title 2.

(16) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (b) to Section 12.011, Education Code (Section 11.051,

Education Code, in engrossed version; Section 12.011, Education Code, in House special printing), to read as follows:

(b) The adoption of a home-rule school district charter by a school district does not affect:

(1) the district's boundaries; or

(2) taxes or bonds of the district authorized before the effective date of the charter.

Explanation: This change is necessary to preclude legal questions as to a school district's boundaries or its ability to levy a tax or sell bonds that were approved before the district adopted a home-rule charter.

(17) Senate Rule 12.03(3) is suspended to permit the committee to add Subsection (a) to Section 12.013, Education Code (Section 11.053, Education Code, in engrossed version; Section 12.013, Education Code, in House special printing), to read as follows:

(a) A home-rule school district has the powers and entitlements granted to school districts and school district boards of trustees under this title, including taxing authority.

Explanation: This change is necessary to clarify that a home-rule school district has the same entitlements under Title 2 as any other school district.

(18) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 12.015(b), Education Code (Section 11.055, Education Code, in engrossed version; Section 12.015, Education Code, in House special printing), to read as follows:

The membership of the charter commission must reflect the racial, ethnic, socioeconomic, and geographic diversity of the district.

Explanation: This change is necessary to ensure that a home-rule charter commission reflects the racial, ethnic, socioeconomic, and geographic diversity of the school district.

(19) Senate Rule 12.03(2) is suspended to permit the committee to omit Subdivision (2) of Section 11.056, Education Code (engrossed version), and Subdivision (2) of Section 12.016, Education Code (House special printing), which reads as follows:

(2) specify the district requirements on elementary school class-size limits;

Explanation: This change is necessary to conform to changes made to Section 12.013(b), which provide that a home-rule school district is subject to elementary school class-size limits only in the case of a low-performing campus.

(20) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.017(a), Education Code (Section 12.0161, Education Code, in House special printing), to read as follows:

(a) The charter commission shall submit the proposed charter to the secretary of state. The secretary of state shall determine whether a proposed charter contains a change in the governance of the school district.

Explanation: This change is necessary to require a charter commission to submit a proposed home-rule charter to the secretary of state so that the

secretary may review the charter and if necessary recommend to the governing body that the charter should be submitted for preclearance under the Voting Rights Act.

(21) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.018, Education Code (Section 11.057, Education Code, in engrossed version; Section 12.017, Education Code, in House special printing), to read as follows:

Sec. 12.018. LEGAL REVIEW. The charter commission shall submit the proposed charter to the commissioner. As soon as practicable, but not later than the 30th day after the date the commissioner receives the proposed charter, the commissioner shall review the proposed charter to ensure that the proposed charter complies with any applicable laws and shall recommend to the charter commission any modifications necessary. If the commissioner does not act within the prescribed time, the proposed charter is approved.

Explanation: This change is necessary to require a charter commission to submit a proposed home-rule charter to the commissioner and to clarify that the 30-day period provided to the commissioner for reviewing a proposed charter begins on the date the commissioner receives the charter.

(22) Senate Rule 12.03(1) is suspended to permit the committee to strike "board of trustees" and substitute "governing body" in Sections 12.020(a), (b), (d), and (i), Education Code (Section 11.059, Education Code, in engrossed version; Section 12.019, Education Code, in House special printing).

Explanation: This change is necessary because a home-rule school district may adopt a governing structure that does not include a "board of trustees."

(23) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (j) to Section 12.020, Education Code (Section 11.059, Education Code, in engrossed version; Section 12.019, Education Code, in House special printing), to read as follows:

(j) Section 12.017 applies to a proposed charter amendment, except that the governing body shall submit the proposed charter amendment to the secretary of state.

Explanation: This change is necessary to require the governing body of a home-rule school district to submit a proposed charter amendment to the secretary of state so that the secretary may review the amendment and if necessary recommend to the governing body that the amendment should be submitted for preclearance under the Voting Rights Act.

(24) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (c) to Section 12.021, Education Code (Section 11.060, Education Code, in engrossed version; Section 12.020, Education Code, in House special printing), to read as follows:

(c) As soon as practicable after a school district adopts a home-rule school district charter or charter amendment, the board of trustees or governing body shall notify the commissioner of the outcome of the election.

Explanation: This change is necessary to require the board of trustees or governing body to notify the commissioner of the outcome of an election on a home-rule charter or charter amendment, without regard to whether the charter or amendment is adopted or rejected.

(25) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.027(c), Education Code (Section 11.065(c), Education Code, in engrossed version; Section 12.025, Education Code, in House special printing), to read as follows:

(c) A district whose home-rule school district charter is revoked or rescinded under this subchapter shall operate under the other provisions of Title 1 and this title that apply to school districts.

Explanation: This change adds a reference to a home-rule school district charter that is rescinded to conform to Section 12.030.

(26) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.030, Education Code, to read as follows:

Sec. 12.030. RESCISSION OF CHARTER. (a) A home-rule school district charter may be rescinded as provided by this section.

(b) The governing body of the district shall order an election on the question of rescinding a home-rule school district charter if:

(1) the governing body receives a petition requesting a rescission election signed by at least five percent of the registered voters of the district; or

(2) at least two-thirds of the total membership of the governing body adopt a resolution ordering that a rescission election be held.

(c) As soon as practicable after the date of receipt or adoption of a resolution under Subsection (b), the governing body shall order an election.

(d) The proposition to rescind the home-rule school district charter shall be submitted to the voters of the district at an election to be held on the first uniform election date that occurs at least 45 days after the date on which the governing body orders the election.

(e) The ballot shall be printed to permit voting for or against the proposition: "Whether the home-rule school district charter of (name of school district) shall be rescinded so that the school district becomes an independent school district."

(f) A home-rule school district charter is rescinded if the rescission is approved by a majority of the qualified voters of the district voting at an election held for that purpose at which at least 25 percent of the registered voters of the district vote.

(g) The rescission takes effect on a date established by resolution of the governing body but not later than the 90th day after the date of an election held under this section at which rescission of the charter is approved and at which the number of registered voters required under Subsection (f) vote. As soon as practicable after that election, the governing body shall notify the commissioner and the secretary of state of the results of the election and of the effective date of the rescission.

(h) The rescission of a home-rule school district charter under this section does not affect:

(1) the district's boundaries; or

(2) taxes or bonds of the district authorized before the effective date of the rescission.

Explanation: This change is necessary to permit a home-rule school district to voluntarily return to the status the district had before adopting the home-rule charter.

(27) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (c) to Section 12.057, Education Code (Section 11.204, Education Code, in engrossed version; Section 12.057, Education Code, in House special printing), to read as follows:

(c) The campus or program is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers.

Explanation: This change is necessary to provide that a campus or program for which a charter is granted, and the campus's or program's employees and volunteers, have the same immunity from liability as a school district and its employees and volunteers.

(28) Senate Rule 12.03(4) is suspended to permit the committee to add Section 12.101(a), Education Code (Section 11.151(a), Education Code, in engrossed version; Section 12.101(a), Education Code, in House special printing), to read as follows:

(a) In accordance with this subchapter, the State Board of Education may grant a charter on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity or a school district, including a home-rule school district. In this subsection, "eligible entity" means:

(1) an institution of higher education as defined under Section 61.003;

(2) a private or independent institution of higher education as defined under Section 61.003;

(3) an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(4) a governmental entity.

Explanation: This change is necessary to limit the entities that may obtain a charter for an open-enrollment school.

(29) Senate Rule 12.03(4) is suspended to permit the committee to add Subdivision (4) to Section 12.102, Education Code (Section 11.152, Education Code, in engrossed version; Section 12.012, Education Code, in House special printing), to read as follows:

(4) does not have authority to impose taxes.

Explanation: This change is necessary to clarify that an open-enrollment charter school does not have taxing authority.

(30) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 12.106(a), Education Code (Section 11.157(a), Education Code, in engrossed version; Section 12.106(a), Education Code, in House special printing), to read as follows:

(a) An open-enrollment charter school is entitled to the distribution from the available school fund for a student attending the open-enrollment

charter school to which the district in which the student resides would be entitled.

Explanation: This change is necessary to clarify the amount of the distribution from the available school fund to which an open-enrollment charter school is entitled.

(31) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 12.111(6), Education Code (Section 11.162(6), Education Code, in engrossed version; Section 12.110, Education Code, in House special printing), to read as follows:

(6) prohibit discrimination in admission policy on the basis of . . . the district the child would otherwise attend in accordance with this code . . . .

Explanation: This change is necessary to prohibit an open-enrollment charter school from discriminating in its admission policy on the basis of the district in which a child would otherwise attend school.

(32) Senate Rule 12.03(4) is suspended to permit the committee to add Subdivision (14) to Section 12.111, Education Code (Section 11.162, Education Code, in engrossed version; Section 12.110, Education Code, in House special printing), to read as follows:

(14) specify any type of enrollment criteria to be used.

Explanation: This change is necessary to require that the charter of an open-enrollment charter school specify the school's enrollment criteria.

(33) Senate Rule 12.03(2) is suspended to permit the committee to omit text in Section 13.054(f), Education Code (Section 13.058(f), Education Code, in engrossed version). The omitted text reads as follows:

A district that receives an adjustment to its local fund assignment under this section is not eligible for incentive aid under Subchapter G.

Explanation: This change is necessary because Section 13.054, Education Code, pertains to annexation, rather than consolidation, of certain school districts, and incentive aid payments under Subchapter G, Chapter 13, are available only to certain school districts created through consolidation.

(34) Senate Rule 12.03(1) is suspended to permit the committee to amend the heading of Section 13.205, Education Code (Section 13.125, Education Code, in engrossed version), to read as follows:

Sec. 13.205. DISPOSITION OF TERRITORY; AFFAIRS OF ABOLISHED DISTRICT.

Explanation: This change is necessary to clarify the contents of the section.

(35) Senate Rule 12.03(1) is suspended to permit the committee to substitute "state minimum personal leave program" for "state minimum sick leave program" in Section 19.009(f), Education Code.

Explanation: This change is necessary to conform to changes made by the committee to Section 22.003.

(36) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 21.003, Education Code, to read as follows:

Sec. 21.003. CERTIFICATION REQUIRED. (a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian,

educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

(b) A person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.

Explanation: This change is necessary to clarify the text of this section and to conform to other changes made by the bill.

(37) Senate Rule 12.03(1) is suspended to permit the committee to change text in Section 21.102(c), Education Code (Section 21.152, Education Code, in the engrossed version), to read as follows:

(c) An employment contract may not extend the probationary contract period beyond the end of the third consecutive school year of the teacher's employment by the school district unless, during the third year of a teacher's probationary contract, the board of trustees determines that it is doubtful whether the teacher should be given a continuing contract or a term contract. If the board makes that determination, the district may make a probationary contract with the teacher for a term ending with the fourth consecutive school year of the teacher's employment with the district, at which time the district shall:

(1) terminate the employment of the teacher; or

(2) employ the teacher under a continuing contract or a term contract as provided by Subchapter D or E, according to district policy.

Explanation: This change is necessary to allow a school district to employ a teacher under a probationary contract for a fourth year if necessary.

(38) Senate Rule 12.03(2) is suspended to permit the committee to omit text relating to hearings under probationary contracts (Section 21.153(b), Education Code, in engrossed version; Section 21.107, Education Code, in House special printing), which reads as follows:

(b) [~~Sec. 13.104. HEARING.~~] A [~~In event a~~] teacher holding a probationary contract who is notified of the district's intention [~~of the board of trustees~~] to terminate the teacher's [~~his~~] employment at the end of the teacher's [~~his~~] current contract period is entitled, on[~~, he shall have a right upon~~] written request, to an informal [~~a~~] hearing before the board of trustees or a subcommittee of the board, according to board policy. At the[~~, and at such~~] hearing, the teacher shall be given the reasons for termination of the teacher's [~~his~~] employment. After the [~~such~~] hearing, the board of trustees or board subcommittee may confirm or revoke the [~~its previous action of~~] termination. The[~~; but in any event, the~~] decision of the board of trustees or board subcommittee is [~~shall be~~] final and non-appealable.

Explanation: This change is necessary to omit requirements relating to hearings for a teacher dismissed at the end of a probationary period.

(39) Senate Rule 12.03(4) is suspended to permit the committee to add Section 21.106, Education Code, to read as follows:

Sec. 21.106. RETURN TO PROBATIONARY STATUS. (a) In lieu of discharging a teacher employed under a continuing contract, terminating a teacher employed under a term contract, or not renewing a teacher's term contract, a school district may, with the written consent of the teacher, return the teacher to probationary contract status.

(b) A teacher may agree to be returned to probationary contract status only after receiving written notice of the proposed discharge, termination, or nonrenewal.

(c) A teacher returned to probationary contract status must serve a new probationary contract period as provided by Section 21.102 as if the teacher were employed by the district for the first time.

Explanation: This change is necessary to allow a school district to return a teacher to probationary contract status in lieu of discharging or terminating the teacher or not renewing the teacher's contract.

(40) Senate Rule 12.03(1) is suspended to permit the committee to change text in Section 21.153(a), Education Code (Section 21.203, Education Code, in engrossed version; Section 21.108, Education Code, in House special printing), to read as follows:

A school district that employs a teacher under a probationary contract for the third or, if permitted, fourth consecutive year of service and that elects to employ the teacher in future years under a continuing contract shall notify the teacher in writing of the teacher's election to continuing contract status.

Explanation: This change is necessary to allow a school district to employ a teacher under a probationary contract for a fourth year if necessary.

(41) Senate Rule 12.03(3) is suspended to permit the committee to add Subdivision (5) to Section 21.154, Education Code (Section 21.204, Education Code, in engrossed version; Section 21.102, Education Code, in House special printing), to read as follows:

(5) is discharged for a reason stated in the teacher's contract that existed on or before September 1, 1995, and in accordance with the procedures prescribed by this chapter; or

Explanation: This change is necessary to permit discharge of a teacher for a reason stated in a contract that existed before the effective date of the bill.

(42) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 21.158(a), Education Code (21.208(a), Education Code, in engrossed version; Section 21.109(a), in House special printing), to read as follows:

(a) Before a teacher employed under a continuing contract may be discharged, suspended without pay, or released because of a necessary reduction of personnel, the board of trustees must notify the teacher in writing of the proposed action and the grounds for the action.

Explanation: This change is necessary to conform to other changes made by the committee.

(43) Senate Rule 12.03(2) is suspended to permit the committee to omit provisions relating to suspension without pay pending discharge (Section 21.209, Education Code, in engrossed version; Section 21.111, Education Code, in House special printing), which read as follows:

Sec. 21.209 [~~13.113~~]. SUSPENSION WITHOUT PAY PENDING DISCHARGE. If the district proposes to [~~proposed action be~~] discharge [~~of~~] the teacher for a reason listed [~~any of the reasons set forth~~] in Section 21.206 [~~13.109 of this code~~], the superintendent may, without a hearing, suspend the teacher [~~may be suspended~~] without pay. If a teacher is suspended under this section, the hearing on the proposed discharge may [~~by order of the board of trustees, or by the superintendent of schools if such power has been delegated to him by express regulation previously adopted by the board of trustees, but in such event the hearing shall~~] not be delayed for more than 15 days after the date the teacher requests a [~~request for~~] hearing, unless by written consent of the teacher. If the teacher is reinstated, the teacher shall immediately be paid any compensation withheld during any period of suspension without pay.

Explanation: This change is necessary to delete the provision authorizing suspension of teachers without pay.

(44) Senate Rule 12.03(3) is suspended to permit the committee to add "in consultation with the State Office of Administrative Hearings" to Section 21.252(a), Education Code (Section 21.302(a), Education Code, in engrossed version; Section 21.163(a), Education Code, in House special printing).

Explanation: This change is necessary to require the State Board of Education to consult with the State Office of Administrative Hearings before adopting rules for certifying hearing examiners.

(45) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 21.252(b), Education Code (Section 21.302(c), Education Code, in engrossed version; Section 21.163(b), Education Code, in House special printing), to read as follows:

(b) The commissioner shall certify hearing examiners according to the criteria established under Subsection (a). A person certified as a hearing examiner or the law firm with which the person is associated may not serve as an agent or representative of:

(1) a school district;

(2) a teacher in any dispute with a school district; or

(3) an organization of school employees, school administrators, or school boards.

Explanation: This change is necessary to prohibit employment of a hearing examiner who is currently serving or associated with agents or representatives of certain persons or entities, without regard to whether the hearing examiner has served in that capacity in the past.

(46) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 21.301(d), Education Code (Section 21.315, Education Code, in engrossed version; Section 21.165, Education Code, in House special printing), to read as follows:

In conducting a hearing under this subchapter, the commissioner has the same authority relating to discovery and conduct of a hearing as an independent hearing examiner has under Subchapter F.

Explanation: This change is necessary to allow the commissioner to issue subpoenas and maintain decorum at a hearing in an appeal concerning a teacher contract dispute.

(47) Senate Rule 12.03(4) is suspended to permit the committee to add Paragraph (B) to Section 21.352(a)(2), Education Code (Section 21.272, Education Code, in both engrossed version and House special printing), to read as follows:

(B) containing the items described by Sections 21.351(a)(1) and (2); and

Explanation: This change is necessary to require that a teacher appraisal process developed by a board of trustees include as part of the appraisal the teacher's implementation of discipline management programs and the performance of the teacher's students.

(48) Senate Rule 12.03(3) is suspended to permit the committee to add text to Section 21.352, Education Code (Section 21.272, Education Code, in both engrossed version and House special printing), to read as follows:

(b) The board of trustees may reject an appraisal process and performance criteria developed by the district- and campus-level committees but may not modify the process or criteria.

Explanation: This change is necessary to make clear that the board of trustees may reject an appraisal process and performance criteria but may not modify them.

(49) Senate Rule 12.03(2) is suspended to permit the committee to omit the following text from Section 21.401, Education Code (Section 21.401, Education Code, in engrossed version; Section 21.301, Education Code, in House special printing):

An educator employed under an 11-month contract must provide a minimum of 210 days of service. An educator employed under a 12-month contract must provide a minimum of 230 days of service.

Explanation: This change is necessary to eliminate requirements relating to educators employed under 11-month and 12-month contracts.

(50) Senate Rule 12.03(1) is suspended to permit the committee to strike "at least 225 minutes in the school week" and substitute "at least 450 minutes within each two-week period" in Section 21.404(a), Education Code (Section 21.405(a), Education Code, in engrossed version; Section 21.304(a), Education Code, in House special printing).

Explanation: This change is necessary to give districts greater flexibility in scheduling teachers' planning and preparation periods.

(51) Senate Rule 12.03(2) is suspended to permit the committee to omit text relating to teacher preparation, staff development, and continuing education (Section 21.451, Education Code, in engrossed version; Section 21.351, Education Code, in House special printing), which reads as follows:

Sec. 21.451 [~~16.052~~]. [~~OPERATION OF SCHOOLS;~~] TEACHER PREPARATION, [~~AND~~] STAFF DEVELOPMENT, AND CONTINUING

EDUCATION. (a) Except as provided by Subsection (b) or Section 25.084, for each school year, each [~~Each~~] school district must provide for not less than:

(1) three [~~180 days of instruction for students and not less than three~~] days of preparation for classroom teachers;

(2) four days of staff development; and

(3) three days of continuing education for educators to fulfill requirements adopted by State Board for Educator Certification rule [~~for each school year, except as provided in Subsection (c) of this section~~].

Explanation: This change is necessary to omit specific mandates relating to teacher preparation, staff development, and continuing education.

(52) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 21.452, Education Code (Section 21.452, Education Code, in engrossed version; Section 21.352, Education Code, in House special printing), to read as follows:

Sec. 21.452. STAFF DEVELOPMENT REQUIREMENTS. (a) The staff development provided by a school district must be conducted in accordance with minimum standards developed by the commissioner for program planning, preparation, and improvement. The staff development:

(1) must include technology training and training in conflict resolution and discipline strategies; and

(2) may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, in regard to prayers in public school.

(b) The staff development must be predominantly campus-based, related to achieving campus performance objectives established under Section 11.253, and developed and approved by the campus-level committee established under Section 11.251. Campus staff development may include activities that enable the campus staff to plan together to enhance existing skills, to share effective strategies, to reflect on curricular and instructional issues, to analyze student achievement results, to reflect on means of increasing student achievement, to study research, to practice new methods, to identify students' strengths and needs, to develop meaningful programs for students, to appropriately implement site-based decision-making, and to conduct action research. The campus staff development activities may be conducted using study teams, individual research, peer coaching, workshops, seminars, conferences, or other reasonable methods that have the potential to improve student achievement.

(c) A school district may use district-wide staff development developed and approved through the district-level decision process under Section 11.251.

Explanation: These changes are necessary to conform to the change made by the committee that deletes the requirement for a minimum number of staff development days.

(53) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 21.901, Education Code (Section 11.114, Education Code, in House special printing), which reads as follows:

Sec. 21.901 [~~13.901~~]. EMPLOYMENT CONSULTATION WITH TEACHERS. The board of trustees of each independent school district[~~, rural high school district, and common school district,~~] and district [~~their~~] administrative personnel[;] may consult with teachers with respect to matters of educational policy and conditions of employment. A board[~~, and such boards~~] of trustees may adopt [~~and make~~] reasonable rules[~~, regulations~~] and make agreements to provide for such consultation. This section does [~~shall~~] not limit or affect the power of the [~~said~~] trustees to [~~manage and~~] govern and oversee the management of the [~~said~~] schools.

Explanation: This change is necessary to delete unnecessary language.

(54) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change text in Subdivision (1) of Section 25.084(a), Education Code, to read as follows:

(1) the number of contract days of employees and the number of days of operation, including any time required for staff development, planning and preparation, and continuing education, otherwise required by law; . . . .

Explanation: This change is necessary to clarify that to provide year-round instruction, a school district may modify components comprising the number of employee contract days or days of school operation.

(55) Senate Rule 12.03(3) is suspended to permit the committee to add text to Section 25.111, Education Code, to read as follows:

Sec. 25.111. STUDENT/TEACHER RATIOS. Except as provided by Section 25.112, each school district must employ a sufficient number of teachers certified under Subchapter B, Chapter 21, to maintain an average ratio of not less than one teacher for each 20 students in average daily attendance.

Explanation: This change is necessary to clarify that in counting a teacher for purposes of computing student/teacher ratios, a teacher must have the appropriate certification to teach a particular class as determined in accordance with Subchapter B, Chapter 21.

(56) Senate Rule 12.03(4) is suspended to permit the committee to add Section 26.012, Education Code, to read as follows:

Sec. 26.012. FEE FOR COPIES. The agency or a school district may charge a reasonable fee in accordance with Subchapter F, Chapter 552, Government Code, for copies of materials provided to a parent under this chapter.

Explanation: The added language is necessary to allow the Texas Education Agency or a school district to charge a parent a reasonable fee for copies of materials to which a parent has access under Chapter 26.

(57) Senate Rule 12.03(1) is suspended to permit the committee to delete "special education cooperatives" and substitute "shared services arrangements" in Section 29.001, Education Code.

Explanation: The language is changed to conform with current terminology and practice in providing special education services to children.

(58) Senate Rule 12.03(1) is suspended to permit the committee to delete "vocational" and substitute "career and technology" in Section 29.001(8), Education Code.

Explanation: The language is changed to conform with terminology used in federal law.

(59) Senate Rules 12.03(1) and (3) are suspended to permit the committee to add Section 29.007, Education Code, to read as follows:

Sec. 29.007. SHARED SERVICES ARRANGEMENTS. School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement.

Explanation: The change in reference from "cooperatives" to "shared services arrangements" conforms with current terminology and practice in providing special education services to children. The language requiring a written contract to be executed and presented to the commissioner of education for approval is necessary to ensure proper provision of services and use of money in shared services arrangements.

(60) Senate Rule 12.03(1) is suspended to permit the committee to delete "special education cooperative" and substitute "shared services arrangement unit" in Section 29.008(a), Education Code.

Explanation: The language is changed to conform with current terminology and practice in providing special education services to children.

(61) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 29.014, Education Code, which reads as follows:

Sec. 29.014. PILOT PROGRAM FOR INCLUSION. The agency shall establish procedures and criteria for the allocation of funds appropriated under Section 42.151(l) [in house special printing; Section 42.151(m) in engrossed version] to school districts selected by the agency to establish a pilot program for the inclusion of students with disabilities in the regular classroom so that those students may receive an appropriate free public education in the least restrictive environment. This section expires August 31, 1997.

Explanation: This deletion is necessary because there is no appropriation of funds for the program in the House or Senate version of Section 42.151.

(62) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.054(b), Education Code (Section 29.053(f), Education Code, in engrossed version; Section 29.054(b), Education Code, in House special printing), to read as follows:

(b) An application for an exception may be filed with the agency when a district is unable to hire a sufficient number of teachers with teaching certificates appropriate for bilingual education instruction to staff the required program. The application must be accompanied by:

(1) documentation showing that the district has taken all reasonable affirmative steps to secure teachers with teaching certificates appropriate for bilingual education instruction and has failed;

(2) documentation showing that the district has affirmative hiring policies and procedures consistent with the need to serve limited English proficiency students;

(3) documentation showing that, on the basis of district records, no teacher having a teaching certificate appropriate for bilingual instruction or emergency credentials has been unjustifiably denied employment by the district within the past 12 months; and

(4) a plan detailing specific measures to be used by the district to eliminate the conditions that created the need for an exception.

Explanation: This change is necessary to correct obsolete terminology. Educators do not receive bilingual education "endorsements."

(63) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.061(a), Education Code (Section 29.059(a), Education Code, in engrossed version; Section 29.061(a), Education Code, in House special printing), to read as follows:

(a) The State Board for Educator Certification shall provide for the issuance of teaching certificates appropriate for bilingual education instruction to teachers who possess a speaking, reading, and writing ability in a language other than English in which bilingual education programs are offered and who meet the general requirements of Chapter 21. The board shall also provide for the issuance of teaching certificates appropriate for teaching English as a second language. The board may issue emergency endorsements in bilingual education and in teaching English as a second language.

Explanation: The change is necessary to correct obsolete terminology. Educators do not currently receive "endorsements" to provide bilingual education or English as a second language instruction.

(64) Senate Rule 12.03(1) is suspended to permit the committee to delete "remedial" and substitute "accelerated" in the the heading to Section 29.081, Education Code, and in Sections 29.081(a), (b), and (c), Education Code.

Explanation: The terminology is changed to avoid the negative connotations of the term "remedial."

(65) Senate Rule 12.03(1) is suspended to permit the committee to delete each reference to "vocational" in Subchapter F, Chapter 29, Education Code (Sections 29.181-29.185), and substitute "career and technology."

Explanation: The language is changed to conform with terminology used in federal law.

(66) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.251(1), Education Code, to read as follows:

(1) "Adult education" means services and instruction provided below the college level for adults by public local education agencies, public nonprofit agencies, or community-based organizations.

Explanation: The language is changed to conform to **S.B. 170** by Ellis, reported engrossed by the Senate on April 25, 1995.

(67) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 29.251(5), Education Code, which reads as follows:

(5) "Educationally disadvantaged adult" has the meaning assigned by 20 U.S.C. Section 1201a.

Explanation: The definition is unnecessary as a result of the deletion of the term in Section 29.251(1).

(68) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.253, Education Code, to read as follows:

Sec. 29.253. PROVISION OF ADULT EDUCATION PROGRAMS. Adult education programs shall be provided by public school districts, public junior colleges, public universities, public nonprofit agencies, and community-based organizations approved in accordance with state statutes and rules adopted by the State Board of Education. The programs must be designed to meet the education and training needs of adults to the extent possible within available public and private resources. Bilingual education may be the method of instruction for students who do not function satisfactorily in English whenever it is appropriate for their optimum development.

Explanation: The language is changed to conform to **S.B. 170** by Ellis, reported engrossed by the Senate on April 25, 1995.

(69) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.254, Education Code, to read as follows:

Sec. 29.254. ADULT EDUCATION ADVISORY COMMITTEE. The State Board of Education may establish an adult education advisory committee composed of not more than 21 members representing public and private education, business, labor, minority groups, and the public to advise the board on needs, priorities, and standards of adult education programs conducted in accordance with this subchapter.

Explanation: The language is changed to allow participation of diverse groups in providing advice to the State Board of Education regarding adult education.

(70) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 29.255(a), Education Code, to read as follows:

(a) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in this state and to implement and support a statewide program to meet the total range of adult needs for adult education, related skill training, and pilot programs to demonstrate the effectiveness of the community education concept. The agency shall ensure that public local education agencies, public nonprofit agencies, and community-based organizations have direct and equitable access to those funds. An additional sum of money may be appropriated to the Texas Department of Commerce for the purpose of skill training in direct support of industrial expansion and start-up, and those locations, industries, and occupations designated by the Texas Department of Commerce, when such training is also in support of the basic purposes of this subchapter. To fulfill the basic purposes of this subchapter, an additional sum of money may be appropriated for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations.

Explanation: The language is changed to conform to **S.B. 170** by Ellis, reported engrossed by the Senate on April 25, 1995.

(71) Senate Rule 12.03(2) is suspended to permit the committee to omit "of education" in Section 30.052(g), Education Code.

Explanation: This change is needed because "commissioner" is defined to mean the commissioner of education.

(72) Senate Rules 12.03(2) and (3) are suspended to permit the committee to amend Section 30.087(b) to read as follows:

(b) From the amount appropriated for regional day school programs, the commissioner shall allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.

Explanation: This change is needed to authorize the commissioner to allocate funds according to the number of weighted full-time equivalent students served and to consider available local resources.

(73) Senate Rule 12.03(4) is suspended to allow the committee to add Sections 30.102(a-1) and (b-1), Education Code, to read as follows:

(a-1) For the 1995-1996 school year, a classroom teacher or full-time librarian employed by the commission is entitled to receive as a minimum salary the monthly salary rate specified by Section 21.4011. A classroom teacher or full-time librarian may be paid, from funds appropriated to the commission, a salary in excess of the minimum specified by that section, but the salary may not exceed the rate of pay for a similar position in the public schools of an adjacent school district. This subsection expires September 1, 1996.

(b-1) Subsection (b) applies beginning with the 1996-1997 school year. This subsection expires January 1, 1997.

Explanation: These changes are needed to conform to the minimum salary schedules established under Chapter 21.

(74) Senate Rule 12.03(4) is suspended to permit the committee to add Section 31.021(c), Education Code, to read as follows:

(c) After setting aside the amounts specified by Subsection (b), the State Board of Education shall determine the amount remaining in the available school fund that is available for distribution under Chapter 43 for the following school year. The board shall use any amount by which the amount available for distribution under Chapter 43 for the following school year exceeds the amount available for distribution under Chapter 43 for the 1995-1996 school year to increase the allotment under Subsection (b)(2).

Explanation: This change is necessary to provide an increased allotment for:

(1) purchasing electronic textbooks or technological equipment; or

(2) training educational personnel in using electronic textbooks and providing access to technological equipment for instructional use.

(75) Senate Rule 12.03(4) is suspended to permit the committee to add Section 31.025, Education Code, to read as follows:

Sec. 31.025. LIMITATION ON COST. (a) The State Board of Education shall set a limit on the cost that may be paid from the state textbook fund for a textbook placed on the conforming or nonconforming list for a particular subject and grade level. The board may not reject a textbook for placement on the conforming or nonconforming list because the textbook's price exceeds the limit established under this subsection.

(b) Subject to Section 31.151, if a school district or open-enrollment charter school selects a textbook from a conforming or nonconforming list that exceeds the limit established under Subsection (a):

(1) the state shall pay the publisher an amount equal to the limit established under Subsection (a) multiplied by the number of textbooks the district or school requisitions; and

(2) the district or school is responsible for the remainder of the cost.

Explanation: This change is necessary to limit the cost of textbooks and allow school districts to exceed that limit if they pay for the remainder of the cost.

(76) Senate Rule 12.03(4) is suspended to permit the committee to add Section 31.029, Education Code, to read as follows:

Sec. 31.029. BILINGUAL TEXTBOOKS. The board shall purchase or otherwise acquire textbooks for use in bilingual education classes.

Explanation: This change is necessary to require the State Board of Education to acquire textbooks for use in bilingual education classes.

(77) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 33.081(e), Education Code (Section 33.081(d), Education Code, in engrossed version; Section 33.081(e), Education Code, in House special printing), which reads as follows:

(d) A student may not be suspended under this section during the period in which school is recessed for the summer or during the initial grade reporting period of a regular school term on the basis of grades received in the final grade reporting period of the preceding regular school term.

Explanation: The language is unnecessary as a result of the revised wording of Section 33.081(c), which states that "A suspension does not last beyond the end of a school year."

(78) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 34.004, Education Code (Section 34.006, Education Code, in engrossed version; Section 34.004, Education Code, in House special printing), to read as follows:

Sec. 34.004. STANDING CHILDREN. A school district may not require or allow a child to stand on a school bus that is in motion.

Explanation: This change is necessary to omit the provision that ties the prohibition on children standing on a school bus to the receipt of transportation funding under the Foundation School Program.

(79) Senate Rules 12.03(1) and (3) are suspended to permit the committee to amend and add text to Section 34.008, Education Code (Section 34.014, Education Code, in engrossed version; Section 34.008, Education Code, in House special printing), to read as follows:

Sec. 34.008. CONTRACT WITH TRANSIT AUTHORITY OR COMMERCIAL TRANSPORTATION COMPANY. (a) A board of county school trustees or school district board of trustees may contract with a transit authority or a commercial transportation company for all or any part of a district's public school transportation if the authority or company:

(1) requires its school bus drivers to have the qualifications required by and to be certified in accordance with standards established by the Department of Public Safety; and

(2) uses only those school motor vehicles in transporting public school students that satisfy safety requirements imposed by law on school motor vehicles operated by public school transportation systems.

(b) This section does not prohibit the county or school district board from supplementing the state transportation cost allotment with local funds necessary to provide complete transportation services.

(c) A transit authority or a commercial transportation company contracting under this section for daily transportation of pre-primary, primary, or secondary students to or from school shall conduct, in a manner and on a schedule approved by the county or district school board, the following education programs:

(1) a program to inform the public that public school students will be riding on the authority's or company's buses;

(2) a program to educate the drivers of the buses to be used under the contract of the special needs and problems of public school students riding on the buses; and

(3) a program to educate public school students on bus riding safety and any special considerations arising from the use of the authority's or company's buses.

(d) In this section, "transit authority" includes a transportation authority or a transit department.

Explanation: This change is necessary to clarify that buses operated by various governmental transportation systems may be used to transport students and to provide a definition of "transit authority".

(80) Senate Rule 12.03(1) is suspended to permit the committee to change the heading to Section 34.010, Education Code (Section 34.011, in engrossed version; Section 34.010, in House special printing), by striking "ACTIVITIES, ETC." and substituting "AND OTHER SCHOOL-RELATED ACTIVITIES."

Explanation: This change is necessary to make the section heading more descriptive.

(81) Senate Rule 12.03(4) is suspended to permit the committee to add Section 37.001(a), Education Code, to read as follows:

(a) Each school district shall, with the advice of its district-level committee established under Section 11.251, and jointly, as appropriate, with the juvenile board of each county in which the district is located, adopt a student code of conduct for the district. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or alternative education program;

(2) outline the responsibilities of each juvenile board concerning the establishment and operation of a juvenile justice alternative education program under Section 37.011;

(3) define the conditions on payments from the district to each juvenile board;

(4) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to an alternative education program; and

(5) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007.

Explanation: This change is necessary to specify contents of a student code of conduct, including standards for student conduct and procedures for placement of disruptive students in alternative settings.

(82) Senate Rule 12.03(4) is suspended to permit the committee to add Section 37.001(c), Education Code, to read as follows:

(c) Each school district shall adopt a student code of conduct as required by this section not later than September 1, 1996. This subsection expires September 1, 1997.

Explanation: This change is necessary to delay the date by which a school district must adopt a student code of conduct.

(83) Senate Rule 12.03(4) is suspended to permit the committee to add Section 37.005, Education Code, to read as follows:

Sec. 37.005. SUSPENSION. (a) The principal or other appropriate administrator may suspend a student who engages in conduct for which the student may be placed in an alternative education program under this subchapter.

(b) A suspension under this section may not exceed three school days.

Explanation: This change is necessary to permit the temporary suspension of a student who engages in conduct for which the student may be placed in an alternative education program.

(84) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (c) to Section 37.008, Education Code (Section 37.004, Education Code, in engrossed version; Section 37.004, Education Code, in House special printing), to read as follows:

(c) An off-campus alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.

Explanation: This change is necessary to specify the applicability of provisions of the Education Code to off-campus alternative education programs.

(85) Senate Rule 12.03(4) is suspended to permit the committee to add text to Section 37.009(a), Education Code (Section 37.005(a), Education Code, in engrossed version), to read as follows:

The student may not be returned to the regular classroom pending the hearing.

Explanation: This change is necessary to prohibit the return of a student to the regular classroom pending a hearing on the placement of the student in an alternative education program or expulsion of the student.

(86) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (a) to Section 37.011, Education Code (Section 37.008, Education Code, in House special printing), to read as follows:

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

(1) is not required to be approved by the Texas Juvenile Probation Commission; and

(2) is not subject to Subsection (c), (d), (f), or (g).

Explanation: This change is necessary to require a juvenile justice alternative education program approved by the Texas Juvenile Probation Commission only in a county with a population of more than 125,000 and to permit a juvenile justice alternative education program in a smaller county.

(87) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (b) to Section 37.011, Education Code (Section 37.008, Education Code, in House special printing), to read as follows:

(b) If a student is found to have engaged in conduct described by Section 37.007 and the student is found by a juvenile court to have engaged in delinquent conduct under Title 3, Family Code, the juvenile court shall:

(1) require the juvenile justice alternative education program in the county in which the conduct occurred to provide educational services to the student; and

(2) order the student to attend the program from the date of adjudication.

Explanation: This change is necessary to require a juvenile court to place a student who engages in certain serious conduct in a juvenile justice alternative education program.

(88) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (f) to Section 37.011, Education Code (Section 37.008, Education Code, in House special printing), to read as follows:

(f) A juvenile justice alternative education program must operate at least:

(1) seven hours per day; and

(2) 180 days per year.

Explanation: This change is necessary to require a mandatory juvenile justice alternative education program to operate, on both a daily basis and a yearly basis, the same amount of time as a school district.

(89) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (j) to Section 37.011, Education Code (Section 37.008, Education Code, in House special printing), to read as follows:

(j) A juvenile board in a county with a population greater than 125,000 shall establish a juvenile justice alternative education program not

later than September 1, 1996. A student who engages in conduct described by Section 37.007 before the date on which a juvenile justice alternative education program for the county in which the student resides begins operation shall be expelled for a period not to exceed one year. This subsection expires September 1, 1997.

Explanation: This change is necessary to provide sufficient time for juvenile boards to establish juvenile justice alternative education programs in those counties required to do so.

(90) Senate Rule 12.03(4) is suspended to permit the committee to change the heading to Section 37.083, Education Code, by striking "PROGRAMS" and substituting "PROGRAMS; SEXUAL HARASSMENT POLICIES."

Explanation: This change is necessary to make the section heading more descriptive.

(91) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 38.009, Education Code (Section 38.008, Education Code, in engrossed version; Section 38.009, Education Code, in House special printing), to read as follows:

Sec. 38.009. ACCESS TO MEDICAL RECORDS. (a) A school administrator, nurse, or teacher is entitled to access to a student's medical records maintained by the school district for reasons determined by district policy.

(b) A school administrator, nurse, or teacher who views medical records under this section shall maintain the confidentiality of those medical records.

(c) This section does not authorize a school administrator, nurse, or teacher to require a student to be tested to determine the student's medical condition or status.

Explanation: The change is necessary to entitle a school nurse to access to a student's medical records maintained by a school.

(92) Senate Rule 12.03(3) is suspended to permit the committee to add text in Section 39.023(a), Education Code, to read as follows:

(a) The agency shall adopt appropriate criterion-referenced assessment instruments designed to assess competencies in reading, writing, mathematics, social studies, and science. All nonexempt students shall be assessed in:

(1) reading and mathematics, annually in grades three through eight;

(2) writing, in grades four and eight; and

(3) social studies and science, at an appropriate grade level determined by the State Board of Education.

Explanation: This change is necessary to require assessment instruments under the statewide assessment program to assess competencies in social studies and science.

(93) Senate Rule 12.03(4) is suspended to permit the committee to add Sections 39.023(c) and (i), Education Code, to read as follows:

(c) The agency shall adopt end-of-course assessment instruments for students in secondary grades who have completed Algebra I, Biology I, English II, and United States history.

(i) Beginning with the 1995-1996 school year, the State Board of Education shall administer the end-of-course assessment instruments under Subsection (c) in Algebra I and Biology I. Not later than the 1998-1999 school year, the State Board of Education shall administer the end-of-course assessment instruments under Subsection (c) in English II and United States history. This subsection expires September 1, 2001.

Explanation: This change is necessary to require and phase-in the administration of end-of-course assessment tests in specified subject areas.

(94) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 39.027(b), Education Code, which reads as follows:

(b) The State Board of Education shall adopt rules under which a district may determine if a student is eligible for an exemption under this section. The agency shall closely monitor compliance with those rules.

Explanation: This change is necessary to conform to changes made to Section 39.023 by the committee.

(95) Senate Rule 12.03(3) is suspended to permit the committee to add text in Section 39.030(b), Education Code, to read as follows:

(b) The results of individual student performance on academic skills assessment instruments administered under this subchapter are confidential and may be released only in accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Explanation: This change is necessary to require aggregation of overall student performance data on the basis of ethnicity and gender as well as on other bases.

(96) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (b) to Section 39.031, Education Code, to read as follows:

(b) The cost of releasing the question and answer keys under Section 39.023(d) shall be paid from amounts appropriated to the agency.

Explanation: This change is necessary to require that the Texas Education Agency pay the cost of releasing question and answer keys for assessment instruments.

(97) Senate Rules 12.03(1) and (3) are suspended to permit the committee to redesignate Section 39.053, Education Code, relating to a campus report card, as Section 39.052, to conform cross-references as necessary, and to add text in Subsection (c) of that section to read as follows:

(c) The commissioner shall adopt rules for requiring dissemination of appropriate student performance portions of campus report cards annually to the parent, guardian, conservator, or other person having lawful control of each student at the campus. On written request, the school district shall provide a copy of a campus report card to any other party.

Explanation: These changes are necessary to improve the readability of Chapter 39 and to limit the dissemination of campus report cards to appropriate student performance portions of the report cards.

(98) Senate Rule 12.03(1) is suspended to permit the committee to redesignate Section 39.052, Education Code, relating to performance reports, as Section 39.053, and to conform cross-references as necessary.

Explanation: This change is necessary to improve the readability of Chapter 39.

(99) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 39.076, relating to agency assistance, and to renumber subsequent sections of Chapter 39 appropriately.

Explanation: This change is necessary to omit the requirement that the Texas Education Agency provide certain assistance or referrals to a school district that has difficulty meeting accreditation or performance standards.

(100) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 39.094(b), Education Code, to read as follows:

(b) The campus-level committee established under Section 11.253 shall determine the use of the funds awarded to a school under this subchapter. The professional staff of the district shall determine the use of the funds awarded to the school district under this subchapter.

Explanation: This change is necessary to refer to the campus-level committee rather than the school committee to conform with the other provisions of the title.

(101) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 39.112(b)(3)(B), Education Code (Section 39.112(b)(2) in engrossed version), to read as follows:

(b) A school campus or district is not exempt under this section from:

. . .

(3) a requirement, restriction, or prohibition relating to:

. . .

(B) public school accountability as provided by Subchapters B, C, D, and G; . . . .

Explanation: This change is necessary to exclude from the exemption established by the subsection certain provisions relating to public school accountability.

(102) Senate Rule 12.03(4) is suspended to permit the committee to add Subsections (e)(4)-(6), Section 39.131, Education Code, to read as follows:

[(e)] . . . The master or management team:

. . .

(4) may not change the number of or method of selecting the board of trustees;

(5) may not set a tax rate for the district; and

(6) may not adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board of trustees.

Explanation: This change is necessary to clarify the duties if the commissioner appoints a master or management team as an accreditation sanction.

(103) Senate Rule 12.03(2) is suspended to permit the committee to omit sections of the Education Code relating to restricting written reports

from school districts and school district employees, teachers' records and reports, and reports to the State Board of Education (Sections 39.156, 39.157, and 39.158 in engrossed version; Sections 39.151, 39.152, and 39.153 in House special printing).

Explanation: This change is necessary to omit requirements and restrictions relating to certain records and reports. As a result of the omission, Section 39.159 in engrossed version (Section 39.154 in house special printing) has been moved to Section 29.083 in the conference committee report.

(104) Senate Rule 12.03(4) is suspended to permit the committee to reorder the subsections in Section 41.002, Education Code, and to add a new Section 41.002(c) to read as follows:

(c) The amount of money necessary to replace funds made unavailable to the Foundation School Program by operation of Subsection (b) may be paid only from funds specifically appropriated for that purpose. If a sufficient amount of money is not appropriated to fully replace funds made unavailable to the Foundation School Program by operation of Subsection (b), the adjustment to the taxable values of property in each district to which Subsection (b) applies shall be modified proportionately to the extent necessary so that the amount of funds made unavailable is equal to the amount appropriated to replace those funds.

Explanation: This change is necessary to ensure that there is not less money available for Foundation School Program purposes as a result of the requirement under Subsection (b) that the commissioner of education adjust the taxable values of a school district's property to reflect a decline in value.

(105) Senate Rule 12.03(4) is suspended to permit the committee to add Section 41.034(c), Education Code, to read as follows:

(c) Four or more districts that consolidate into one district under this subchapter within a period of one year may elect to receive incentive aid under this section or to receive incentive aid for not more than five years under Subchapter G, Chapter 13. Incentive aid under this subsection may not provide the consolidated district with more revenue in state and local funds than the district would receive at the equalized wealth level.

Explanation: This change is necessary to provide another means of encouraging consolidation, which usually saves the state and districts money. The change provides districts, under specified circumstances, with flexibility in selecting between incentives offered to districts that consolidate.

(106) Senate Rule 12.03(4) is suspended to permit the committee to add a new Section 41.099, Education Code, to read as follows:

Sec. 41.099. LIMITATIONS. Sections 41.002(e), 41.094, 41.097, and 41.098 apply only to a district that:

(1) executes an agreement to purchase all attendance credits necessary to reduce the district's wealth per student to the equalized wealth level; or

(2) executes an agreement to purchase attendance credits and an agreement under Subchapter E to contract for the education of nonresident

students who transfer to and are educated in the district but who are not charged tuition.

Explanation: This change, which, with a limited exception, provides certain benefits to a district only if the district achieves the equalized wealth level solely through the purchase of attendance credits, is necessary to encourage a school district to achieve the equalized wealth level through the purchase of attendance credits under Subchapter D, Chapter 41, rather than through another available means under Chapter 41 that is less beneficial to the state.

(107) Senate Rule 12.03(1) is suspended to permit the committee to strike "weighted students in average daily attendance" and substitute "students in weighted average daily attendance" in Sections 41.093, 41.121, and 41.158, Education Code.

Explanation: This change is necessary to conform Chapter 41 to similar changes made to Chapter 42.

(108) Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (a-1) to Section 42.005, Education Code, to read as follows:

(a-1) Subsection (a) applies beginning with the 1997-1998 school year. For the 1995-1996 and 1996-1997 school years, average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under Section 25.081(a) divided by the minimum number of days of instruction. This subsection expires September 1, 1997.

Explanation: This change is necessary to delay including extended year program attendance in the computation of average daily attendance until the 1998-1999 biennium.

(109) Senate Rule 12.03(1) is suspended to permit the committee to alter Section 42.101, Education Code, by striking "vocational education" and substituting "career and technology education."

Explanation: This change is necessary to conform with terminology used in federal law.

(110) Senate Rule 12.03(4) is suspended to permit the committee to add Section 42.102(c), Education Code, to read as follows:

(c) Beginning with the 1996-1997 school year, the commissioner shall recompute the cost of education index, excluding from the computation the calculation for the diseconomies of scale component and substituting a value of 1.00.

Explanation: This change is necessary to provide for the computation of the cost of education adjustment for the 1996-1997 and subsequent school years.

(111) Senate Rule 12.03(4) is suspended to permit the committee to add Section 42.103(e), Education Code, to read as follows:

(e) The commissioner may make the adjustment authorized by Subsection (d)(3) only if the district's wealth per student does not exceed the equalized wealth level under Section 41.002. For purposes of this subsection, a district's wealth per student is determined in the manner

provided by Section 41.001, except that the adjustment provided by Subsection (d)(3) is not used in computing the number of students in weighted average daily attendance.

Explanation: This change is necessary to provide that the mid-sized school adjustment is not applied in computing a school district's wealth per student for purposes of the equalized wealth level under Chapter 41.

(112) Senate Rule 12.03(1) is suspended to permit the committee to alter text in Sections 42.152(c), (d), and (e), Education Code, by striking "remedial instruction" and substituting "accelerated instruction."

Explanation: This change is necessary to conform to preferred terminology.

(113) Senate Rule 12.03(4) is suspended to permit the committee to add a sentence at the end of Section 42.152(c), Education Code, to read as follows:

A home-rule school district or an open-enrollment charter school must use funds allocated under Subsection (a) to provide compensatory services but is not otherwise subject to Subchapter C, Chapter 29.

Explanation: This change is necessary to provide a home-rule school district or open-enrollment charter school with greater flexibility in providing a compensatory education program.

(114) Senate Rule 12.03(1) is suspended to permit the committee to alter text in Section 42.152(m), Education Code (Section 42.152(n), Education Code, in engrossed version; Section 42.152(m), Education Code, in House special printing), by striking "students who are not disabled" and substituting "students who do not have disabilities."

Explanation: This change is necessary to conform to preferred terminology.

(115) Senate Rule 12.03(1) is suspended to permit the committee to alter text in Section 42.154, Education Code, by striking "vocational education" and substituting "career and technology education" throughout the section.

Explanation: This change is necessary to conform with terminology used in federal law.

(116) Senate Rule 12.03(1) is suspended to permit the committee to alter Section 42.155(f), Education Code, by striking "vocational education" and substituting "career and technology education."

Explanation: This change is necessary to conform with terminology used in federal law.

(117) Senate Rule 12.03(4) is suspended to permit the committee to alter Section 42.155(j), Education Code (Section 42.155(h), Education Code, in engrossed version), by adding the following sentence at the end of Subsection (j):

The commissioner shall determine the appropriate allotment.

Explanation: This change is necessary to allow the commissioner of education to determine the appropriate transportation allotment for the Texas School for the Deaf.

(118) Senate Rule 12.03(4) is suspended to permit the committee to add a sentence at the end of Section 42.253(b), Education Code, to read as follows:

The commissioner shall reduce the entitlement of each district that has a final taxable value of property for the second year of a state fiscal biennium that is higher than the estimate under Section 42.254. A reduction under this subsection may not reduce the district's entitlement below the amount to which it is entitled at its actual taxable value of property. The sum of the reductions under this subsection may not be greater than the amount necessary to fully fund the entitlement of each district.

Explanation: This change is necessary to permit the commissioner of education, in the second year of a state fiscal biennium, to reduce the foundation school fund entitlement of a school district that has a taxable value of property that is higher than the estimate originally used to determine the district's entitlement.

(119) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 43.005, Education Code, to read as follows:

Sec. 43.005. EXTERNAL INVESTMENT MANAGERS. (a) The State Board of Education may contract with private professional investment managers to assist the board in making investments of the permanent school fund. A contract under this subsection must be approved by the board or otherwise entered into in accordance with board rules relating to contracting authority.

(b) The State Board of Education by rule may delegate a power or duty relating to the investment of the permanent school fund to a committee, officer, employee, or other agent of the board.

Explanation: This change is necessary to permit the State Board of Education to delegate a power or duty relating to the investment of the permanent school fund.

(120) Senate Rule 12.03(4) is suspended to permit the committee to add Section 43.006, Education Code, to read as follows:

Sec. 43.006. INVESTMENT MANAGEMENT. (a) The State Board of Education may delegate investment authority and contract for the investment of the permanent school fund to the same extent as the governing board of an institution of higher education with respect to an institutional fund under Chapter 163, Property Code.

(b) The board may enter into a contract with a nonprofit corporation for the corporation to invest funds under the control and management of the board, including the permanent school fund, as designated by the board. The corporation may not engage in any business other than investing funds designated by the board under the contract.

(c) The board must approve the:

(1) articles of incorporation and bylaws of the corporation and any amendment to the articles of incorporation or bylaws;

(2) investment policies of the corporation, including changes to those policies;

(3) audit and ethics committee of the corporation; and

(4) code of ethics of the corporation.

(d) The board of directors of the corporation must be members of the State Board of Education.

(e) If an investment contract entered into under Subsection (b) includes the permanent school fund within the scope of funds under the control and management of the State Board of Education to be invested by the corporation, the board shall provide for an annual financial audit of the permanent school fund. The audit shall be performed by the state auditor.

(f) The corporation shall file quarterly reports with the State Board of Education concerning matters required by the board.

(g) The corporation is subject to the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(h) The corporation may not enter into an agreement or transaction with a:

(1) director, officer, or employee of the corporation acting in other than an official capacity on behalf of the corporation;

(2) business entity in which a director, officer, or employee of the corporation has an interest;

(3) former director, officer, or employee of the corporation on or before the second anniversary of the date the person ceased to be a director, officer, or employee of the corporation; or

(4) business entity in which a former director, officer, or employee of the corporation has an interest on or before the second anniversary of the date the person ceased to be a director, officer, or employee of the corporation.

(i) An agreement or transaction entered into in violation of Subsection (h) is void.

(j) For purposes of this section, a person has an interest in a business entity if:

(1) the person owns five percent or more of the voting stock or shares of the business entity;

(2) the person owns five percent or more of the fair market value of the business entity; or

(3) money received by the person from the business entity exceeds five percent of the person's gross income for the preceding calendar year.

(k) In this section:

(1) "Governing board" and "institutional fund" have the meanings assigned by Chapter 163, Property Code.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

Explanation: This change is necessary to permit the State Board of Education to establish a nonprofit corporation to manage the investment of the permanent school fund. Similar authority with respect to the permanent university fund is granted to the board of regents of The University of Texas System under **H.B. 1877**, effective May 23, 1995.

(121) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 43.008, Education Code (Section 43.007, Education Code, in both engrossed version and House special printing), to read as follows:

Sec. 43.008. TREATMENT OF PREMIUM AND DISCOUNT. (a) If the State Board of Education authorizes the payment of a premium out of the permanent school fund for purchasing any fixed-income security as an

investment for that fund, the principal of the security and a portion of the interest accruing from the security equal to the premium shall be treated as principal in the investment as provided by Subsection (c) and shall be returned to the permanent school fund.

(b) If the State Board of Education authorizes the purchase of a fixed-income security at less than par, the discount received in the purchase shall be paid to the available school fund as additional interest revenue as provided by Subsection (c).

(c) The amount of an interest payment treated as principal under Subsection (a) or the amount of a discount treated as additional revenue under Subsection (b) shall be determined at the end of a period using an interest method that produces a periodic interest revenue or expenditure, including amortization, that represents a level effective interest rate on the sum of the maturity value of the fixed-income security and its unamortized premium or discount at the beginning of the period. The difference between the amount computed and the stated interest revenue on the outstanding amount of the fixed-income security is the amount of the periodic amortization.

(d) In this section:

(1) "Effective interest rate" means the interest rate that, when used to discount debt service payments, produces a present value equal to the debt proceeds.

(2) "Fixed-income security" means a government or corporate obligation with a specified maturity date, interest rate, and interest payment dates.

(3) "Stated interest revenue" means the face value or coupon interest rate multiplied by the maturity value of the fixed-income security.

Explanation: This change is necessary to permit the State Board of Education to use generally accepted accounting principles in amortizing the principal of and interest on certain securities purchased for the permanent school fund. This change is also necessary to conform the new code to the current code, as amended by **S.B. 409**, effective September 1, 1995.

(122) Senate Rule 12.03(3) is suspended to permit the committee to add text to Section 44.002(b), Education Code, to read as follows:

(b) The budget must be prepared according to generally accepted accounting principles, rules adopted by the State Board of Education, and adopted policies of the board of trustees.

Explanation: This change is necessary to include language that appeared in Section 12.181(d)(6) in the engrossed version.

(123) Senate Rules 12.03(1), (2), and (3) are suspended to permit the committee to change the heading of Section 44.031, Education Code, to change Subsections (a), (b), and (c) of that section to read as follows, and to reletter subsequent subsections appropriately:

Sec. 44.031. PURCHASING CONTRACTS. (a) Except as provided by this section, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at $25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value to the district:

(1) competitive bidding;

(2) competitive sealed proposals;

(3) a request for proposals;

(4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;

(5) an interlocal contract; or

(6) a design/build contract.

(b) In determining to whom to award a contract, the district may consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the district's needs;

(5) the vendor's past relationship with the district;

(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(7) the total long-term cost to the district to acquire the vendor's goods or services; and

(8) any other relevant factor that a private business entity would consider in selecting a vendor.

Explanation: These changes are necessary to clarify the manner in which school district can make purchases of personal property and to impose consistent restrictions on purchases of personal property and certain contracts made in relation to buildings.

(124) Senate Rule 12.03(1) is suspended to permit the committee to change Section 44.031(g), Education Code (Section 44.031(h), Education Code, in engrossed version and House special printing), to read as follows:

(g) Notice of the time when and place where the bids or proposals will be received shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the date set for awarding the contract, except that on contracts involving less than $25,000, the advertising may be limited to two successive issues of any newspaper published in the county in which the district's central administrative office is located, and if there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located.

Explanation: This change is necessary to require publication of the date by which bids must be received, instead of the date on which the contract will be let.

(125) Senate Rule 12.03(2) is suspended to permit the committee to omit text from Section 44.032(b), Education Code, to read as follows:

(b) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of

Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

Explanation: This change is necessary to conform to changes made under Section 44.031.

(126) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change Section 44.033(a), Education Code, to read as follows:

(a) A school district shall purchase personal property as provided by this section if the value of the items is at least $10,000 but less than $25,000, in the aggregate, for a 12-month period. In the alternative, the school district may purchase those items in accordance with Sections 44.031(a) and (b).

Explanation: This change is necessary to conform to changes made under Section 44.031.

(127) Senate Rule 12.03(2) is suspended to permit the committee to omit from Section 45.003(c), Education Code, the following:

Except as otherwise provided by this section, bonds may not be issued pursuant to Subsection (b)(1) if the aggregate principal amount of tax bond indebtedness of the district after issuing the bonds would exceed 10 percent of the assessed valuation of taxable property in the district according to the most recent approved ad valorem tax rolls of the district. A district may issue bonds resulting in an aggregate principal amount of tax bond indebtedness that exceeds 10 percent of the district's assessed valuation if:

(1) the bonds are issued for the purpose of constructing and equipping a replacement for a building lost to fire or natural disaster;

(2) the bonds are issued in an amount necessary for that purpose, less the amount paid by insurance covering the loss; and

(3) the resulting aggregate principal amount of tax bond indebtedness does not exceed 16 percent of the district's assessed valuation.

Explanation: The omission of the ad valorem tax limit computed according to assessed value of property in the district would permit greater local control of tax decisions subject to Section 45.003(e), Education Code, and would enable districts that have reached the limit to issue bonds for necessary school facilities.

(128) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 45.006, Education Code, other than Subsection (e), engrossed version, which is similar to Subsections (c) and (d) of the House special printing, relating to tax limitations, and to renumber subsequent sections appropriately.

Explanation: The omission of the tax limitations conforms to the limitation structure in Section 45.003 and eliminates unnecessary references to constitutional limitations.

(129) Senate Rule 12.03(3) is suspended to permit the committee to add text to Section 45.081(c) to read as follows:

(c) "Real property" means any interest in land, buildings, or fixtures permanently attached to buildings or land.

Explanation: This change is necessary to include fixtures permanently attached to land within the definition of real property.

(130) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add a new Subsection (c) to Section 45.082 to read as follows and to reletter subsequent subsections appropriately:

(c) The board is not required to determine that the real property is not required for the current needs of the district if the sale is:

(1) to a corporation established by the district under Article 717s, Revised Statutes; and

(2) subject to a lease-purchase agreement under which the district will acquire the real property.

Explanation: This change is necessary to permit a school district to sell property to be used by the district to a corporation established by the district.

(131) Senate Rules 12.03(1), (2), and (3) are suspended to permit the committee to change the heading of Section 45.106, Education Code, and the text of Subsection (a) of that section to read as follows:

Sec. 45.106. USE OF COUNTY AVAILABLE FUND APPORTIONMENT FOR AREA SCHOOLS CAREER AND TECHNOLOGY EDUCATION. (a) A school district or accumulation of districts that operates a school designated as an area school for career and technology education purposes or that participates in a designated area career and technology education program shall use its annual county available school fund apportionment, if any, in the operation of the area school or program or in financing facilities for the school, notwithstanding any laws to the contrary.

Explanation: This change is necessary to conform to changes in terminology made in other portions of the bill.

(132) Senate Rules 12.03(1), (2), (3), and (4) are suspended to permit the committee to substitute the following for Subchapter H, Chapter 45, Education Code:

SUBCHAPTER H. ASSESSMENT AND COLLECTION OF TAXES

Sec. 45.231. EMPLOYMENT OF ASSESSOR AND COLLECTOR. (a) The board of trustees of an independent school district may employ a person to assess or collect the school district's taxes and may compensate the person as the board of trustees considers appropriate.

(b) This section does not prohibit an independent school district from providing for the assessment or collection of the school district's taxes under a method authorized by Subchapter B, Chapter 6, Tax Code.

Sec. 45.232. ALTERNATE METHODS OF SELECTION UNDER FORMER LAW. An independent school district that used a method of selecting the assessor or collector of the school district's taxes for the 1994 tax year that was authorized by former Subchapter F, Chapter 23, as that subchapter existed on January 1, 1994, but that is not authorized by Section 45.231 or by Subchapter B, Chapter 6, Tax Code, may continue to use that method of selection until the school district uses another method authorized by Section 45.231 or by Subchapter B, Chapter 6, Tax Code, to determine how the assessment or collection is performed.

Explanation: This change is necessary to omit outdated procedures relating to tax assessors and collectors, to allow broad local discretion to employ a tax assessor and collector, and to preserve current exceptions and authorizations.

(133) Senate Rule 12.03(1) is suspended to permit the committee to amend redesignated Chapter 133, Education Code, as amended by Section 3 of the bill (Section 31 in engrossed version) to strike references to "vocational education" and substitute "career and technology education."

Explanation: This change is necessary to conform to changes in federal law terminology.

(134) Senate Rule 12.03(1) is suspended to permit the committee to amend redesignated Chapter 133, Education Code, as amended by Section 3 of the bill (Section 31 in engrossed version) to change references to "board" to "commission" and add Section 133.001(5) to read as follows:

(5) "Commission" means the Texas Employment Commission.

Explanation: This change is necessary to transfer the proposed administration of Chapter 133 from the Texas Higher Education Coordinating Board to the Texas Employment Commission.

(135) Senate Rule 12.03(3) is suspended to permit the committee to amend redesignated Chapter 51, Education Code, as amended by Section 4 of the bill (Section 32 in engrossed version) to add Section 51.752(h) to read as follows:

(h) If the legislature fails to appropriate funds for the operation of the Educational Economic Policy Center, the Legislative Budget Board shall perform the duties of the committee under this subchapter. The board shall make the annual reports required by Subsection (g) to the presiding officers of the standing committees of the senate and the house of representatives with primary jurisdiction over the public school system.

Explanation: This change is necessary to allow the functions of the Educational Economic Policy Center to be performed in the absence of specific appropriations.

(136) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 61.077, Education Code, as amended by Section 20 of the bill (Section 40 in engrossed version; Section 15 in House special printing), to strike references to "vocational" or "vocational-technical" and substitute "career and technology" and to strike references to "State Board of Vocational Education" and substitute "State Board for Career and Technology Education".

Explanation: This change is necessary to conform to changes in federal law terminology.

(137) Senate Rule 12.03(4) is suspended to permit the committee to amend Section 822.201(c), Government Code, as amended in Section 35 of the bill, to read as follows:

(c) Excluded from salary and wages are expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation other than as provided by Subsection (b)(3), compensation that is not made pursuant to a valid employment agreement, payments received in the

1995-96 or a subsequent school year for teaching a driver education and traffic safety course, and any compensation not described in Subsection (b).

Explanation: This change is necessary to exclude payments made for nonacademic activities from being used to determine contributions or benefits under the Teacher Retirement System of Texas.

(138) Senate Rules 12.03(1) and (3) are suspended to permit the committee to amend Subsections (a) and (b) of and add Subsection (b-1) to Section 825.405, Government Code, as amended in Section 37 of the bill (Section 52 in engrossed version; Section 29 in House special printing), to read as follows:

(a) For members entitled to the minimum salary for certain school personnel under Section 21.402 [~~16.056~~], Education Code, and for members who would have been entitled to the minimum salary for certain school personnel under former Section 16.056, Education Code, as that section existed on January 1, 1995, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum or former statutory minimum, as applicable.

(b) For purposes of this section, the statutory minimum salary is the salary provided by Section 21.402 or the former Sections 16.056 and 16.058, Education Code, multiplied by the cost of education adjustment applicable under Section 42.102 [~~16.102~~], Education Code, to the district in which the member is employed.

(b-1) Notwithstanding Subsections (a) and (b), for the 1995-1996 school year, for a member entitled to the minimum salary for certain school personnel under Section 21.4011, Education Code, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum. For purposes of this section, for the 1995-1996 school year, the statutory minimum salary is the salary provided by Section 21.4011, Education Code, multiplied by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed. This subsection expires September 1, 1996.

Explanation: This change is necessary to continue to allow the state to recover retirement contributions on excess salary payments and to provide a one-year transition to the changes in the provision.

(139) Senate Rule 12.03(2) is suspended to permit the committee to omit the section amending Section 98A(b), Public Utility Regulatory Act (Section 61, in the Senate engrossment; Section 47 in the House special printing), which reads as follows:

SECTION 47. CONFORMING AMENDMENT. Subsection (b), Section 98A, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In this section, "interactive multimedia communications" means real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations [~~has the meaning assigned by Section 14.0451(a), Education Code~~].

Explanation: The omission is necessary because the provision amended the Public Utility Regulatory Act, which has since been repealed and replaced with the Public Utility Regulatory Act of 1995.

(140) Senate Rule 12.03(3) is suspended to permit the committee to add the following sections:

SECTION 49. CONFORMING AMENDMENT. Section 3.355(h)(2), Public Utility Regulatory Act of 1995, as enacted by Chapter 9, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(2) "Educational institution" means and includes:

(A) accredited primary or secondary schools owned or operated by state and local governmental entities or private entities;

(B) institutions of higher education as defined by Section 61.003, Education Code;

(C) private institutions of higher education accredited by a recognized accrediting agency as defined by Section 61.003(13), Education Code;

(D) the Texas [~~Central~~] Education Agency, its successors and assigns;

(E) regional education service centers established and operated pursuant to Chapter 8 [~~Sections 11.32 and 11.33~~], Education Code; and

(F) the Texas Higher Education Coordinating Board, its successors and assigns.

SECTION 50. CONFORMING AMENDMENT. Section 3.358(b), Public Utility Regulatory Act of 1995, as enacted by Chapter 9, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) In this section, "interactive multimedia communications" means real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations [~~has the meaning assigned by Section 14.0451(a), Education Code, as added by Chapter 868, Acts of the 73rd Legislature, Regular Session, 1993~~].

Explanation: Section 49 is necessary to correct references to the Texas Education Agency and the statutory authority for operation of regional education service centers. Section 50 is necessary because the comparable provisions in the House special printing (Section 47) and Senate engrossment (Section 61) amended the Public Utility Regulatory Act, which has since been repealed and replaced with the Public Utility Regulatory Act of 1995.

(141) Senate Rule 12.03(4) is suspended to permit the committee in Section 51 of the conference committee report to amend Section 22, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), to read as follows:

Sec. 22. EXEMPTIONS. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist or psychological associate by any: (1) governmental agency[~~; (2) public school district;~~] or (2) [~~(3)~~] regionally

accredited institution of higher education provided such employee is performing those duties for which he is employed by such agency[~~, district,~~] or institution and within the confines of such agency[~~; district,~~] or institution insofar as such activities and services are a part of the duties of his office or position as a psychologist or psychological associate with such agency[~~, district,~~] or institution; except that persons employed as psychologists or psychological associates who offer or provide psychological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists or psychological associates by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pursuing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of members of other licensed professions, including physicians, surgeons, attorneys, registered nurses, licensed vocational nurses, occupational therapists, certified social workers, licensed professional counselors, career counselors, licensed marriage and family therapists, and licensed chemical dependency counselors, if the activities and services are permitted under the applicable license and the members do not represent themselves to be psychologists or describe their services by the use of the term "psychological";

(d) the activities and services of duly recognized members of the clergy who are acting within the members' ministerial capabilities, if the members do not represent themselves to be psychologists or describe their services by the use of the term "psychological";

(e) the voluntary activities and services of persons employed by or working on the behalf of charitable nonprofit organizations, if the persons do not represent themselves to be psychologists or describe their services by the use of the term "psychological."

Explanation: This change is necessary to require school psychologists to be licensed by the Texas State Board of Examiners of Psychologists rather than certified by the Central Education Agency.

(142) Senate Rule 12.03(4) is suspended to permit the committee in Section 51 of the conference committee report to add Section 26, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), to read as follows:

Sec. 26. LICENSED SPECIALIST IN SCHOOL PSYCHOLOGY. (a) The board by rule shall adopt the license classification of "licensed specialist in school psychology." A license issued under this section constitutes the appropriate credential for a person to provide psychological

services in a school in this state as required by Section 21.003(b), Education Code.

(b) The board shall set the standards for qualification of a license issued under this section. The standards must include:

(1) minimum recognized graduate degree requirements;

(2) completion of graduate course work at a regionally accredited institution of higher education in the following areas:

(A) psychological foundations;

(B) educational foundations;

(C) interventions;

(D) assessments; and

(E) professional issues and ethics;

(3) completion of a minimum of 1,200 hours of supervised experience;

(4) receipt of a passing score on a nationally recognized qualifying examination determined to be appropriate by the board and on any other examination determined to be necessary by the board; and

(5) satisfaction of the requirements imposed under Section 11(d) of this Act.

(c) The rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology.

Explanation: This change is necessary to require the setting of standards for persons who provide psychological services in schools.

(143) Senate Rule 12.03(1) is suspended to permit the committee in Section 53 of the conference committee report (Section 63 in engrossed version; Section 50 in House special printing) to strike references to "vocational education" and the "State Board of Vocational Education" in Section 2.06, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), and substitute references to "career and technology education" and "State Board for Career and Technology Education," respectively.

Explanation: This change is necessary to conform to terminology used in federal law.

(144) Senate Rule 12.03(4) is suspended to permit the committee in Section 58 of the conference committee report (Section 79 in engrossed version; Section 54 in House special printing) to repeal the heading to Subchapter A, Chapter 34, Education Code.

Explanation: This change is necessary because the substance of Subchapter A, Chapter 34, has been repealed.

(145) Senate Rule 12.03(4) is suspended to permit the committee in Section 58 of the conference committee report (Section 79 in engrossed version; Section 54 in House special printing) to repeal Section 3A, Chapter 280, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6701d-1, Vernon's Texas Civil Statutes).

Explanation: This change is necessary to conform to changes made to Section 34.004.

(146) Senate Rule 12.03(4) is suspended to permit the committee in Section 63 of the conference committee report (Section 89 in engrossed version) to add the following text:

(f) The Texas Education Agency may issue certificates under Subchapter B, Chapter 13, Education Code, as that subchapter existed on January 1, 1995, until:

(1) September 1, 1996, in the case of a person required to be licensed by a state agency other than the State Board for Educator Certification, as provided by Section 21.003(b), Education Code; and

(2) the effective date of rules of the State Board for Educator Certification for certification under Subchapter B, Chapter 21, Education Code, as added by this Act, in the case of a person required to hold a certificate under Section 21.003(a), Education Code, as added by this Act.

(g) A person who is employed by a public school in a position described by Section 21.003(b), Education Code, as added by this Act, other than the position of school psychologist or associate school psychologist, and who holds a certificate issued by the Central Education Agency or the Texas Education Agency under former Subchapter B, Chapter 13, Education Code, before September 1, 1996, may continue to practice under that certificate. A person practicing under a certificate to which this subsection applies may practice only in the employment of a public school.

(h) Not later than November 1, 1997, the State Board for Educator Certification shall propose rules relating to educator certification, including alternative certification, educator appraisals, and certification sanctions, and other rules the board is required to propose under Subchapter B, Chapter 21. Rules adopted by the State Board of Education under Subchapter B, Chapter 13, Education Code, as that subchapter existed on January 1, 1995, continue in effect until the effective date of rules of the State Board for Educator Certification under Subchapter B, Chapter 21.

Explanation: This change is necessary to provide for the transition to certification of educators by the State Board for Educator Certification.

(147) Senate Rules 12.03(1) and (3) are suspended to permit the committee to change and add text in Section 64(a) of the conference committee report (Section 90(a) in engrossed version; Section 58(a) in House special printing) to read as follows:

(a) Not later than November 1, 1995, the State Board of Education shall adopt rules for the certification of hearing examiners under Section 21.252, Education Code, as added by this Act. Notwithstanding Section 7.102(e), Education Code, as added by this Act, rules adopted under this subsection take effect as provided by Chapter 2001, Government Code.

Explanation: This change is necessary to provide that rules for the certification of hearing examiners take effect as provided by the Administrative Procedure Act rather than as provided by Section 7.102(e), Education Code, under which a rule does not take effect until the beginning of the school year that begins at least 90 days after the date on which the rule was adopted.

(148) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 66 of the conference committee report to read as follows:

SECTION 66. TRANSITION RELATING TO MINIMUM SICK LEAVE PROGRAM. A public school employee retains any sick leave the employee has accumulated as state minimum sick leave under former Section 13.904(a), Education Code, as that subsection existed on January 1, 1995. Former Section 13.904(c), Education Code, as that subsection existed on January 1, 1995, governs the use of that sick leave, and that law is continued in effect for that purpose.

Explanation: This change is necessary to permit a public school employee to retain any sick leave the employee accumulated as state minimum sick leave under former Section 13.904(c).

(149) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 69 of the conference committee report to read as follows:

SECTION 69. TRANSITION PROVISION RELATING TO TEXTBOOKS. (a) The addition of Chapter 31, Education Code, by this Act does not affect the terms or validity of any contract entered into by the State Board of Education in accordance with former Chapter 12, Education Code, as that chapter existed at the time the contract was entered into, and that chapter is continued in effect for that purpose.

(b) The State Board of Education shall proceed with the adoption of textbooks whose adoption is in progress on the effective date of this Act, and Chapter 12, Education Code, as that chapter existed on January 1, 1995, is continued in effect for that purpose.

Explanation: This change is necessary to clarify that Chapter 31, Education Code, does not affect existing textbook contracts and to permit the State Board of Education to proceed with the adoption of textbooks under the former law if the adoption was in progress on the effective date of **S.B. 1**.

(150) Senate Rule 12.03(1) is suspended to permit the committee to strike references in Section 72 of the conference committee report (Section 98 in engrossed version; Section 68 in House special printing) to the "commissioner of higher education" and the "Texas Higher Education Coordinating Board" and substitute references to the "Texas Employment Commission" and to strike references to the "State Board for Career and Technical Education" and substitute references to the "State Board for Career and Technology Education."

Explanation: The change regarding the references to the Texas Employment Commission is necessary to conform to provisions granting the Texas Employment Commission authority over apprenticeship training provisions. The change regarding references to the State Board for Career and Technology Education is necessary to conform to terminology used in federal law.

(151) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 73 of the conference committee report to read as follows:

SECTION 73. APPLICABILITY OF SECTION 41.098, EDUCATION CODE. Section 41.098, Education Code, as added by this Act, applies beginning with the 1996-1997 school year.

Explanation: This change is necessary to postpone the applicability of Section 41.098, which pertains to early agreement credit, until the 1996-1997 school year.

(152) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 74 of the conference committee report to read as follows:

SECTION 74. AUDIT OF PERMANENT SCHOOL FUND. The State Board of Education shall retain an independent accounting firm to perform a financial audit of the permanent school fund before the board implements a contract for investment of the permanent school fund by a corporation pursuant to the authority granted by Section 43.006, Education Code, as added by this Act.

Explanation: This change is necessary to require an audit of the permanent school fund before a corporation invests the money in the fund on behalf of the State Board of Education.

(153) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 75 of the conference committee report to read as follows:

SECTION 75. APPLICABILITY OF SECTION 43.008(c), EDUCATION CODE. Section 43.008(c), Education Code, as added by this Act, applies to each fixed-income security purchased as an investment for the permanent school fund regardless of the date of purchase.

Explanation: This change is necessary to clarify the fixed-income securities to which Section 43.008(c) applies.

(154) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 78 of the conference committee report to read as follows:

SECTION 78. TRANSITION PROVISION RELATING TO SCHOOL PSYCHOLOGISTS. (a) A person who, on or after September 1, 1992, but before September 1, 1996, was employed as a school psychologist or associate school psychologist by a school district of this state under the Education Code, as that code existed on January 1, 1995, is entitled to a license as a licensed school psychologist under Section 26, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), as added by this Act, without examination, if the person applies to the Texas State Board of Examiners of Psychologists for the license before September 1, 1997, and pays the appropriate fees set by that board.

(b) A person who is employed by a public school as a school psychologist or associate school psychologist and who holds a certificate issued by the Central Education Agency or the Texas Education Agency under former Subchapter B, Chapter 13, Education Code, may continue to practice under that certificate until the person obtains a license as a licensed school psychologist as provided by Subsection (a) of this section.

Explanation: This change is necessary to provide a transition provision for licensing of school psychologists.

(155) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 83 of the conference committee report to read as follows:

SECTION 83. PROPOSAL TO IDENTIFY AND ASSIST STUDENTS REQUIRING SPECIAL SERVICES. Not later than December 1, 1996, the State Board of Education shall submit to the legislature a proposal to identify and assist students who do not qualify for special education services under Subchapter A, Chapter 29, Education Code, as added by this Act, but who require special services beyond the regular school program. The proposal must include methods of assessing the special abilities and needs of these students as well as a system to provide these students with appropriate education and career training. Individuals trained in diagnostic and evaluation procedures must be involved in the development of the board's proposal.

Explanation: This change is necessary to require the State Board of Education to submit to the legislature a proposal to identify and assist certain students requiring special services.

(156) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 84 of the conference committee report to read as follows:

SECTION 84. RECOMMENDATION CONCERNING HIGH SCHOOL PROGRAMS OF STUDY. Not later than January 1, 1997, the commissioner of education shall report to the legislature concerning recommended high school programs of study for college preparation and for broad career concentrations in areas such as arts and communication, business and management, health services, human resources, industrial and engineering systems, and natural resources. The recommendations must address providing guidance to a student on sequences of rigorous courses that will prepare the student for continued learning in postsecondary educational, training, or employment settings.

Explanation: This change is necessary to require the commissioner of education to report to the legislature concerning recommended high school programs of study to prepare students for college and employment.

(157) Senate Rule 12.03(4) is suspended to permit the committee to add text in Section 85 of the conference committee report to read as follows:

SECTION 85. LEGISLATIVE BUDGET BOARD STUDY OF ALLOTMENTS AND ADJUSTMENTS UNDER CHAPTER 42, EDUCATION CODE. (a) The Legislative Budget Board shall study the various allotments and adjustments provided for by Chapter 42, Education Code, for the purpose of improving the efficient distribution of state funds.

(b) As part of this study, the board shall review the method by which the state funds the school transportation system. The purpose of this review is to improve efficiency and reduce the paperwork burden on school districts. The board shall also audit each school district whose transportation allocation significantly deviates from the average allocation on a student density basis to determine the reasons for that deviation.

(c) The board shall report its findings to the legislature not later than November 1, 1996.

Explanation: This change is necessary to require the Legislative Budget Board to study the various allotments and adjustments provided for by Chapter 42 for the purpose of improving the efficient distribution of state funds.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

NOMINATIONS RETURNED

On motion of Senator Bivins and by unanimous consent, the Senate agreed to grant the request to return the following nominations to the Governor:

To be Members of the COASTAL COORDINATION COUNCIL: Commissioner Ed Stuart, Galveston County; Joseph T. Surovik, Calhoun County.

(Senator Armbrister in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **S.B. 1**. The Conference Committee Report was filed with the Senate on Thursday, May 25, 1995.

On motion of Senator Ratliff, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Luna.

PRESENTATIONS

Senator Ratliff made presentations to Lieutenant Governor Bob Bullock and the Governor of Texas, His Excellency George W. Bush for their support of **S.B. 1**.

Lieutenant Governor Bullock and Governor Bush each thanked Senator Ratliff and briefly addressed the Senate.

REMARKS ON SENATE BILL 1

On motion of Senator Truan and by unanimous consent, the remarks made by Senator Ratliff and Senator Luna were ordered reduced to writing in the Senate Journal as follows:

Senator Ratliff: Thank you, Mr. President. I would like to mention a few things to the Members, and I have a couple of things of legislative intent that I need to make sure and get in the record. A couple of days ago we did distribute to the Members of the Senate a write-up prepared by the office of the Lieutenant Governor which covers the major points of this bill. I am not going to go over those in any kind of detail. I think you have all heard about them; you have read about them.

Probably the major thing that you have heard about that changed in the conference committee is the list of things that a home-rule school district

can be exempted from. There was a compromise there whereby those school districts may be exempted from 22 to 1, but they may not be in a low-performing campus; 22 to 1 does apply in a campus that is low-performing.

We did take out what we called the free schools, what has been referred to as the voucher program. As you know, I believed in it, but it was one of those things that conference committees are designed for.

We did keep in the open-enrollment charter schools and the district-granted charter schools, as well as a feature that was in the House version which provides for some kinds of transfers in public schools.

The textbook procedure that was adopted by this body on Senator Nelson's amendment stayed, I would say, generally intact, although there were compromises there as well.

We did not only achieve a teacher minimum pay scale increase, but considerably more of an increase than the Senate had provided, thanks very much to Senator Montford and Representative Junell and the conference committee on appropriations. We did maintain the feature that the Senate had put in of an automatic adjuster in that pay scale so that, hopefully, we can stop fighting about minimum teacher pay scales in future years. Because, as the state puts more money into public education, the teacher minimum pay scale will automatically go up. In return for that, we adopted a feature that the conference committee actually came up with in its deliberations, which provides that we put more money into the teacher pay scale. For every three days of extra money we put into that scale, we ask for one extra day of work by the teacher, so that we can gradually expand the teacher year, providing for more teacher-training days and eventually providing for more days of actual classroom, which I think all of us would like to see.

With regard to teacher qualifications, we did maintain the Senate State Board for Educator Certification. However, and in deference to the House's concerns, we provided for a veto power of the State Board of Education on those rules and standards that the State Board for Educator Certification adopts; by two-thirds vote of the State Board of Education, they have a veto power over those rules and standards.

We did put more money into the basic allotment, not only for the teacher pay scale that we put in, but to try to cover the costs of the zero tolerance or safe schools language that we put in here. I am not going to tell you, I am not going to promise you that there is enough money in here to take care of all the needs that we have. There are so many crying needs in zero tolerance. But we did attempt to put some money into the formula, so that schools can get these children who need to be out of the regular classroom into some other setting, so that the other children can study and can learn, and the teachers can be safe and do not have to be wardens.

I think it is a good bill. I think you can be proud of this bill. I never thought I would be able to say this when we went into this struggle, but this bill has now been endorsed by the Texas Classroom Teachers Association, the Texas Federation of Teachers, the Texas State Teachers

Association, the Association of Texas Professional Educators (that is all four of the major teacher groups), the Texas Association of School Boards, the Texas Association of School Administrators, the Texas School Alliance (which includes the major school districts in the state), and the Association for Supervision and Curriculum Development, and others that I did not have time to write down this morning or did not have anything in writing from. I do not think going into this I ever thought that we could do that, and I give you credit and the House Members credit for having been able to try to address the concerns of all those people.

Let me quickly make a couple of comments as far as legislative intent before I ask you to vote. There is a provision in the bill which says that a student may be exempted from TAAS (Texas Assessment of Academic Skills) exams if the student is of limited English proficiency (LEP). We did not mean to totally exempt these students, but to provide for the state board to continue to try to include them in the TAAS exam, but do it in a manner that does not penalize the student or the school district if that student is not able to perform on an exam because of that LEP. I just need to make certain that everyone understands that the entity that defines this exemption is the State Board of Education because, and I quote the statute, "The State Board of Education by rule shall create and implement a statewide assessment program." What we want the state board to do is to develop exams which can include the students, but can include them in a manner so that they are able to understand and to take the test, not simply subject them to a test that they cannot understand.

The second thing I need to do as far as legislative intent: there is an ambiguity in the act which in one place says the commissioner recommends the appraisal instruments for teachers and administrators, but in another section says that the State Board for Educator Certification will do that. The prevailing part of the statute should be the commissioner making this recommendation, since it is in the substantive part of the bill, and the power to the educator certification board is simply in a list of those powers which should have been struck because of the actions of the conference committee.

Finally, Mr. President, let me thank a few people before making the motion. I cannot thank all the staff that literally worked 24 hours a day for weeks on end. I have to mention two people on my staff primarily responsible for this document: Stephanie Korcheck, who is our technician; she became known in the conference committee as "Senate Lady." I cannot imagine how anybody can do a job like she did in conference. And Ellen Williams, who started writing on this code with me a year and a half ago. I don't know where we find people like this. And then the rest of the Senate education staff who are over here behind me, the legislative council: Eric Hougland, Kelley Atkinson, Cindy Stein, and the Lieutenant Governor's folks: Rey Garcia, Rob Woodson. I wish I could tell you how devoted and what long hours these people have spent.

Finally, Governor, you have something of a reputation of involvement in issues, and I am glad for that. But I want to tell this body, from day one on this bill, the lieutenant governor did nothing but tell me, "You have

got my support, you go do this job." And I want to thank you, Governor, for your unwavering support.

I failed to mention the Senate conferees who worked so hard and so long--and let me tell you, it was the best conference committee I ever sat on in six years--and to thank the Members of the Senate Education Committee who worked so hard during the session. When I got caught up in my thank-yous, the first bunch that should have been thanked was you.

Mr. President, let me say something that I said before the conference committee just as we were about to adopt this report. Representative Paul Sadler is a constituent of mine, so I have to be very careful when I deal with him, because he gets to vote for or against me. But, I told the group in that room that in the early days of our country the mountain men and the pioneers used to have an expression: "He will do to ride the river with." I told that group, and I want to tell you, it is hard for me to imagine having tried to ride this river without Paul Sadler in that chair next to me. Paul, thank you.

Senator Luna: Mr. President, thank you. I thank you, Chairman Ratliff, knowing that I walk to a different drum, that you allowed me to participate in the conference committee. The conference committee worked very diligently. We all respect each other. I could not hold you in higher respect, Chairman Ratliff. I know of no one who could have possibly done this task which took you two years. Chairman Sadler, I am so impressed. I knew you just a few sessions ago, when I could tell that you were just barely walking on this issue. You showed extreme progress, incredible progress. Quite often in this conference committee we agreed. I hold a much higher regard of you than I previously did, and I respect you. It reminds me of a story of a woman who always had a show dog. She would go to the best dog shows, and this shaggy dog would always not show. They asked her, "Why do you go?" She said, "Look at the company I keep." This committee was great company. I wish that I could join the vote. As I said before, I have a different perspective. Before I go on, let me acknowledge one person who helped me. Betsy Heard has an incredible expertise in education. She would sit behind me and kick me every time I needed it. She is of incredible value to me.

I feel, like many of you feel, that I represent the least among us, those who have no clout, be they in San Antonio or Amarillo or Dallas. There is no region that they are not in.

There are two primary reasons why I oppose this bill. I would say to you that this bill is out of focus, completely out of focus. It is going to make it better for better students. It is doing nothing for those who are not able to take advantage. Why are they not taking advantage? Is it prenatal care? Is it hunger, poverty? I think the main reason they cannot is because this bill has a major focus on parental involvement. That sounds great if you have a parent that can be involved. Unfortunately, many parents are children themselves. Many parents have traditionally, including my parents, yielded to the teachers and never participated. Many parents have their own problems—drugs, alcohol, or just extended working

hours—and can never participate. We are not addressing the children of these parents at all. We are not doing it. Everything focuses on the gifted and talented, the near-gifted and talented. There is one element of wealth that we do not measure, and it is that parent. Some of these people that we are not addressing do not have appropriate parents, even though they may be wealthy. We are not helping them, either.

The other major reason is the facilities. The court judgment on **S.B. 7** said facilities were in dire need of remediation. The Senate allocated $270 million, in a fashion that I did not approve, and I did not think it was enough. The House allocated $170 million. I think we wound up with $172 or $174 million, and it is a better distribution. Some claim it is a down payment. If it is a down payment, when do we know how much is the full indebtedness that we are going to put in? It is not a down payment, it is another patch up of facilities. We have gone to South Texas and have seen campuses that look like military bases, because they are just all temporary buildings. We cannot educate children unless we have appropriate settings. This $170 million is but one-half of one percent of the total allocation for education.

We are claiming that local control would allow the school districts to reach educational goals. But, we know that school districts will worry more about the tax rate than the educational goals. And what do we do? We worry more about the money than the educational goals. How can we ask them to do anything different? We came to this committee already encumbered by the measly amounts that we had. We promise year after year after year that we will not do that, that we will take the educational concerns and appropriate that money first and then appropriate the rest. We did not do it this time; we have never done it. We cannot expect the school boards to do the educational goals without considering the impact on the tax bases. I think that we have vouchers, the preschool vouchers, and it is much less than originally, but we have vouchers in the open enrollment schools. They said that we had limited to sectarian schools. I do not think we put any limitations to sectarian and nonsectarian, just nonprofit. The Safe Schools Provision—who can talk against safe schools? We did adopt most everything that was proposed, and we made some minor modifications. But, recognize that we have unfunded mandates to the counties. It costs $11,000-plus to educate a child in a detention facility. We are going to give them that task and give them our money, but it will be about 50 percent funded; it will have to come out of the resources of the local juvenile entity. Judge Krier called this an unfunded mandate. It is one. Judge Krier is a Republican judge from Bexar County.

We would provide choice within school districts and outside of school districts. I do not know how superintendents can plan with that system, keeping back the students of least resources. I predict that, like it was in the 1940s and 1950s, when we had no limitations as to choice within a school district—a school district would develop over here and be vocational, a school district would develop over here and it would be technical, one agricultural, and one academic, and the vocational schools would all be minorities, the academic schools would all be Anglo, or

white—we will re-create that system. It is not a novelty, what we are doing. That is what existed in the 1940s and 1950s. That is what we started to change, and we had changed it conceptually. Now we are going way back.

The system that we have now is not what is wrong with education. It is our societal problems. Our children that come to school are already two years behind in the first grade—two years behind. I do not join with glee about this study and that study. We had a study on the extended school year; the study was very positive. The experiment, the pilot, was very positive. We had $10 billion in this current biennium, and by some technicality they threw that out. We started with ten percent set aside for this program, then reduced it to five percent, and then took a major chunk out of second tier. I guess I should be pleased with what we got, because it is more than before. It is a program that study after pilot study has shown works, and, yet, we turn our backs on it.

We did something that I think violates **S.B. 7**. We had some school districts that are wealthy. We had initially a two-year extended full parlance. We are going to extend that several more years. Why? They say they are going to pay us back. They are still going to be the wealthy elite. They do not have to have any of these programs. They have great programs. They are still going to be operating at a level that most schools do. We have got to fix the whole public school system, not just here and there. Supposedly, the money that they have to keep comes back, but, somehow, there is a $43 million appropriation for that, and I do not understand that. I think that is against **S.B. 7**.

We left out school employees. I think people will argue a lot about this teacher pay raise. That is something we did right for the first time in many years. We are providing an increase for some of the teachers. I do not think it is going to affect that many. Before long, when it starts being applied, teachers will say, "Well, it did not affect what goes to my pocket." I am more concerned about what we have not done for the cafeteria employees, the maintenance employees, the bus drivers. They all lost out. We had some provisions for vacations, for sick leave; those are gone. Maybe the local administrators can go clean up the place. I do not think so.

I understand Chairman Ratliff says this is an education bill, and the teachers are the educators. I think there is more to education than the teachers. I think that all these other workers should be provided for, and we failed to provide for them. The 22 to 1 student-teacher ratio is mentioned in a very positive way. I think it is very negative. I think absolutely all children need 22 to 1. There is going to be an inequality of wealth in allowing only the school districts that cost 22 to 1. Therefore, that child is going to cost more money than the child that is going to be on 30 to 1. And they will fund them equally, so the ones that have 30 to 1 and do not need to challenge will have more money than the poor ones to educate in a similar situation.

I have not tried and I should not try to convince anyone to vote with me. You hold your own conscience. Some of you made commitments

before you heard me talk. I regret that, but so be it. I hope, Mr. President, that I am back here to keep working on this issue. I hope some day I can be a full participant and say that we did something for all of the children of Texas. I cannot say that. I will vote against this bill. As you will note, I did not sign the Conference Committee Report, and I will vote against it.

REASON FOR VOTE

Senator Barrientos submitted the following reason for vote:

My vote in favor of **S.B. 1** reflects my support for provisions in the bill which will enable educators to provide discipline in their classrooms, accelerate the delivery of academic instruction, and improve parent-teacher cooperation. This bill, however, failed to preserve key provisions in current law which I have long supported.

The most apparent omission of **S.B. 1**, from my perspective, is the elimination of provisions that authorize effective state programs which prevent children from dropping out of school. For example:

(1) The bill eliminates the state dropout reduction program which I helped establish in 1989. This initiative has been very important in the reduction of the state dropout rate, from 31 percent in 1989 to 18.4 percent in 1993.

(2) **S.B. 1** also eliminates the state's Equivalency Examination Pilot Program which enabled students that would otherwise drop out to stay in school in order to earn their G.E.D. diploma.

(3) Another dropout-prevention program that does not receive adequate recognition in the bill is the Developmental Guidance and Counseling Program which I believe should be expanded with increased compensatory education funding. This program addresses significant problems which keep elementary students from performing well academically—social and family problems.

Provisions in **S.B. 1** that establish home-rule districts also concern me very much, especially the following:

(4) Most teachers' rights and benefits are not guaranteed under home-rule districts.

(5) In addition, teachers' salaries in home-rule districts run the risk of following a different and lower pay-scale than the minimum pay-scale guaranteed by the State of Texas, which received increased funding this year.

(6) Texas educators, under home-rule districts, may also miss the new "zero-tolerance" rights granted by **S.B. 1** to educators in other districts.

(7) Home-rule provisions allow local districts to change their governing structure which, in turn, can lead to the demise of voting rights protections available under single-member district plans. In the specific case of the Austin Independent School District, **S.B. 1** removes the state requirement that the district retain a single-member district form of electing members of the board of trustees.

(8) One final item of home-rule provisions which I oppose is the section which allows a home-rule district to remove the 22 to 1

student-teacher ratio. The home-rule charter, in some campuses, may adopt a less stringent limit on the number of students which one teacher may teach per class. In my opinion, the academic instruction of students in large classes will suffer if home-rule districts choose to reduce district expenditures by increasing the number of students in their classrooms.

I believe **S.B. 1** relies too much on its system of accountability to improve academic achievement. At least one loophole in this system must be closed as soon as possible. Section 39.027 of the bill allows school districts to exempt students with Limited English Proficiency from taking the Texas Assessment of Academic Skills. This provision, I believe, may be misused to remove large numbers of students whose primary language is not English from the "accountability system" in **S.B. 1**. Districts who are not accountable for the academic performance of these students may render the whole accountability rating system under Chapter 39 ineffective.

S.B. 1 does contain some very good possibilities. The powers of local control which are provided in **S.B. 1** for school districts may, and should, be used to direct substantial additional resources for the education of children who are "at-risk" academically. This means that local districts have the ability to use their local and state compensatory education funds to implement effective programs such as the Communities-in-Schools, Guidance Counseling, and Alliance Schools programs.

S.B. 1 can be declared a success to the extent that local districts support innovative and effective programs such as the ones I mentioned. However, should local districts not keep, or improve upon, the state's dropout initiatives and educator rights and benefits, I believe the Legislature must return and reconsider various provisions of the education bill. With these concerns and reservations in mind, I cast my vote in favor of the Education Code Revision of 1995.

BARRIENTOS

CONFERENCE COMMITTEE ON HOUSE BILL 2766

Senator Turner called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2766** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 2766** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Sibley, Madla, Patterson, and Henderson.

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on

Intergovernmental Relations might meet and consider the following bills upon recess today:

H.B. 875
H.B. 2036
H.B. 2509
H.B. 2775
H.B. 3040
H.B. 1832

RECESS

On motion of Senator Sibley, the Senate at 12:24 p.m. recessed until 2:30 p.m. today.

AFTER RECESS

The Senate met at 2:30 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 115, Commemorating the life of service of James Pinckney Henderson.

S.C.R. 122, Commending Peggy Sue Garner for her exceptional service to the State of Texas.

S.C.R. 153, Applauding the efforts of Youth Advocacy, Incorporated.

S.C.R. 156, Extending best wishes to D. L. "Dally" Willis on the occasion of his 75th birthday.

S.C.R. 159, Commending Brenda Shelton Olds for her 27 years of service with the Texas Legislative Reference Library.

S.C.R. 160, Commending the students of Klein Forest High School and designating May 19, 1995, as a Day of Hope and Healing in Texas.

S.C.R. 162, Designating May, 1995, as "Child Focused Accident, Injury, and Illness Prevention Month."

S.C.R. 163, Saluting the First Baptist Church of Marshall, Texas, on its 150th anniversary.

S.C.R. 166, In memory of Charles B. Smith.

H.C.R. 159, Declaring October 13-15, 1995, to be Boom Town Blow Out Days in Texas.

H.C.R. 208, In memory of Elizabeth Hale Calderon.

H.C.R. 223, Honoring Chelsi Smith, Miss Universe 1995.

H.C.R. 224, Honoring Kingwood High School for its athletic championships.

H.C.R. 228, Honoring Dana Vaughn for her success in business with her sister, Denise Ward.

H.C.R. 229, Honoring Denise Ward for her success in business with her sister, Dana Vaughn.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

CAPITOL PHYSICIAN

Senator Brown was recognized and presented Dr. Nick Giannone of Lake Jackson as the "Doctor for the Day."

The Senate welcomed Dr. Giannone and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.B. 175	**H.B. 1200**	**H.B. 1957**	**H.B. 2686**
H.B. 238	**H.B. 1323**	**H.B. 1991**	**H.B. 2698**
H.B. 347	**H.B. 1366**	**H.B. 2035**	**H.B. 2781**
H.B. 359	**H.B. 1405**	**H.B. 2042**	**H.B. 2875**
H.B. 398	**H.B. 1441**	**H.B. 2069**	**H.B. 2943**
H.B. 553	**H.B. 1472**	**H.B. 2162**	**H.B. 3031**
H.B. 677	**H.B. 1479**	**H.B. 2168**	**H.B. 3072**
H.B. 742	**H.B. 1481**	**H.B. 2216**	**H.B. 3120**
H.B. 768	**H.B. 1487**	**H.B. 2307**	**H.C.R. 128**
H.B. 815	**H.B. 1495**	**H.B. 2313**	**H.C.R. 186**
H.B. 828	**H.B. 1586**	**H.B. 2373**	**H.C.R. 205**
H.B. 1048	**H.B. 1651**	**H.B. 2401**	**H.C.R. 227**
H.B. 1094	**H.B. 1698**	**H.B. 2432**	**H.C.R. 231**
H.B. 1127	**H.B. 1785**	**H.B. 2540**	**H.J.R. 68**
H.B. 1180	**H.B. 1900**	**H.B. 2579**	
H.B. 735 (Signed subject to Art. III, Sec. 49a of the Constitution)			

CONFERENCE COMMITTEE ON HOUSE BILL 1810

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1810** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1810** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Ellis, Gallegos, Turner, and Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 814

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 814** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 814** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Montford, Galloway, Gallegos, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 2726

Senator Montford called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2726** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2726** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Ellis, Brown, Lucio, and Barrientos.

CONFERENCE COMMITTEE ON HOUSE BILL 1013

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1013** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1013** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Lucio, Turner, Truan, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 418

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 418** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 418** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Sibley, Madla, Nixon, and Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 2861

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2861** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2861** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; West, Sibley, Haywood, and Sims.

(Senator Truan in Chair)

SENATE BILL 1546 WITH HOUSE AMENDMENTS

Senator Bivins called **S.B. 1546** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **S.B. 1546** (House committee report) on page 1, lines 12 and 13, by striking "An interest common to members of the general public does not qualify as a personal justiciable interest.".

Floor Amendment No. 1 on Third Reading

Amend **S.B. 1546** on third reading as follows:

On page 1 line 12 after "hearing." add "Such right, duty, privilege, or power may be a present or future justiciable interest. An interest which

can be shown to be only common to members of the general public does not qualify as a personal justiciable interest.

The amendments were read.

Senator Bivins moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 1546** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Brown, Armbrister, Sims, and Lucio.

SENATE BILL 964 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 964** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 964** as follows:

(1) On page 22, line 21, strike "may not" and substitute "shall".

(2) On page 22, line 21, strike "in excess of" and substitute "equal to".

(3) On page 49, line 24, strike "may not" and substitute "shall".

(4) On page 49, line 24, strike "in excess of" and substitute "equal to".

Committee Amendment No. 2

Amend **S.B. 964** as follows:

(1) On page 45, line 8, after the phrase "driver.", strike lines 8-17.

(2) On page 42, between lines 17 and 18, insert the following:

"(d) The agency shall contract with the Department of Public Safety to provide undercover and investigative assistance in the enforcement of the prohibition provided by Subsection (a) of this section."

Amendment No. 3

Amend **S.B. 964** as follows:

On page 43, beginning on line 13, strike Section 26 and Section 27 and renumber the subsequent sections appropriately.

Floor Amendment No. 4

Amend **S.B. 964** as follows:

(1) In SECTIONS 1-30 of the bill, strike all references to "Texas Higher Education Coordinating Board [~~Central Education Agency~~]" and substitute "Central Education Agency".

(2) In SECTIONS 1-30 of the bill, strike all references to "board [~~State Board of Education~~]" and substitute "State Board of Education".

(3) In SECTIONS 1-30 of the bill, strike all references to "members of the Texas Higher Education Coordinating Board [~~State Board of Education~~]" and substitute "State Board of Education".

(4) In SECTIONS 1-30 of the bill, strike all references to "commissioner of higher education" and substitute "commissioner of education".

(5) In SECTIONS 1-30 of the bill, strike all references to "Texas Higher Education Coordinating Board" that are not immediately followed by bracketed language and substitute "Central Education Agency".

(6) Strike SECTION 31 of the bill, and substitute the following:

SECTION 31. This Act takes effect September 1, 1995. A change in law made by this Act applies only to an offense committed on or after that date. For purposes of this section, an offense was committed before September 1, 1995, if any element of the offense occured before that date. An offense committed before September 1, 1995, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Floor Amendment No. 6

Amend **S.B. 964** on page 50 line 10, by deleting Section 30 and renumbering subsequent sections accordingly.

Floor Amendment No. 7

Amend **S.B. 964** as follows:

(1) In SECTION 25 of the bill, after "approved by the" (page 43, line 3) insert "department under Section 7A of this Act or by the"; and

(2) In SECTION 25 of the bill, after "public" (page 43, line 15) insert ", home,"; and

(3) In SECTION 26 of the bill, after "education course,"page 44, line 8) insert "which may be a course approved under Section 7A of this Act,"; and

(4) In SECTION 26 of the bill, after "public" (page 44, line 9) insert ", home,"; and

(5) Insert the following new SECTIONS, renumbering accordingly, to read as follows:

SECTION ____. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Section 7A to read as follows:

Sec. 7A DEPARTMENT-APPROVED COURSES. (a) the department by rule shall provide for approval of a driver training course given by the parent or legal guardian of a person who is required to complete successfully a driver training course to obtain a Class C license. The rules must provide that:

(1) the parent or guardian be a licensed driver; and

(2) the student driver spend a minimum number of hours in:

(A) classroom instruction; and

(B) behind-the-wheel instruction.

(b) The department may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by the Central Education Agency, except that the department may not require that:

(1) the classroom instruction be provided in a room having particular characteristics or equipment; or

(2) the vehicle used for the behind-the-wheel instruction have equipment other than the equipment otherwise required by law for operation of the vehicle on a highway while the vehicle is not being used for driver training.

(c) The rules must provide a method by which:

(1) approval of a course if obtained; and

(2) an applicant submits proof of completion of the course.

(d) Completion of a driver training course approved under this section has the same effect under this Act as completion of a driver training course approved by the Central Education Agency.

SECTION_____ . Section 12(d)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) An applicant for a license under this subsection must:

(A) be at least fifteen (15) years of age;

(B) satisfactorily complete and pass a driver training course approved by the Department, which may be a course approved under Section 7A of this Act; and

(C) pass the examination required by Section 10 or 10A of this Act.

Floor Amendment No. 8

Amend **S.B. 964** (House committee report) as follows:

(1) In SECTION 26 of the bill, in the language describing the amendment (page 43, line 15), strike "Subsection (e)" and substitute "Subsections (e) and (f)".

(2) In SECTION 26 of the bill, between lines 23 and 24, insert a new Subsection (f), Article 6687b, Vernon's Texas Civil Statutes, to read as follows:

(f) Each applicant shall be given the option of taking the traffic law and highway sign part of the examination in writing in addition to or instead of by a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version. The department shall inform each person taking the examination of the person's rights under this subsection.

Floor Amendment No. 1 on Third Reading

Amend **S.B. 964** on third reading, in SECTION 31 of the bill, following Subsection (a)(3) (committee printing page 52, between lines 10

and 11), by inserting a new Subdivision (4) of the subsection to read as follows and renumbering subsequent subdivisions appropriately:

(4) notwithstanding Section 13(b)(1)(G), Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), as amended by this Act, a driving safety course approved before the effective date of this Act by the Central Education Agency is not required to be reapproved after the effective date of this Act and no fee is owed in relation to approval of the course unless the fee became due before the effective date of this Act;

Floor Amendment No. 2 on Third Reading

Amend **S.B. 964** on third reading by:

(1) amending new Sec. 7A(a) by inserting the following new subsections:

"(3) the parent or guardian not be convicted of:

(A) criminally negligent homicide; or

(B) driving while intoxicated.

(4) the parent or guardian not be disabled because of mental illness."

(2) inserting a new SECTION to read as follows

SECTION___. Amend Section 21.102, Education Code, by adding Subsection (c) to read as follows:

(c) A public school offering a driver's education program shall make the program accessible to all children who are exempt from the requirements of compulsory attendance under Sec. 21.033 of the Texas Education Code.

The amendments were read.

Senator Harris moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 964** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Armbrister, Sibley, Madla, and Montford.

(President in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 2027

Senator Gallegos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2027** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2027** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Nixon, Patterson, Truan, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 943

Senator Gallegos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 943** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 943** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Cain, Whitmire, Ellis, and West.

CONFERENCE COMMITTEE ON HOUSE BILL 1541

Senator Gallegos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1541** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1541** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Henderson, Truan, Barrientos, and Wentworth.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1863 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **H.B. 1863**. The Conference Committee Report was filed with the Senate on Wednesday, May 24, 1995.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Truan asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report on **H.B. 1863**.

SENATE BILL 1128 WITH HOUSE AMENDMENT

Senator Ellis called **S.B. 1128** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 1128** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the deposit, investment, safekeeping, and records and reports of, and collateral requirements for the deposit of, funds held by the state treasurer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 404.021, Government Code, is amended to read as follows:

Sec. 404.021. ELIGIBLE INSTITUTIONS. (a) Any state or national bank doing business in the state may be designated by the board as a state depository. Designation of a bank as a depository includes all of the bank's branches within the state.

(b) Any savings and loan association doing business [~~domiciled~~] in the state may be designated by the board as a state depository.

(c) Any state or federal credit union doing business in the state may be designated by the board as a state depository.

(d) Deposits of eligible institutions designated as state depositories must be covered by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. [~~Any institution in the state whose accounts or deposits are insured according to the laws of the United States may be designated by the board as a state depository and may accept state funds to the extent of that insurance, regardless of the amount of its paid-up capital stock and permanent surplus.~~]

SECTION 2. Subchapter C, Chapter 404, Government Code, is amended by adding Section 404.0212 to read as follows:

Sec. 404.0212. DEPOSITORY RATING UNDER CERTAIN FEDERAL LAW. (a) In this section, "regulated financial institution" has the meaning assigned by 12 U.S.C. Section 2902.

(b) A regulated financial institution that accepts a deposit from the treasurer shall report to the treasurer the rating assigned to the financial institution under 12 U.S.C. Section 2906.

(c) A regulated financial institution shall make a report required by this section:

(1) annually, not later than August 1 of each year; and

(2) not later than the 30th day after the date the financial institution is notified that the assigned rating has been changed.

(d) The board may not select as a depository a regulated financial institution that has been assigned a rating below "outstanding record of meeting community credit needs" or "satisfactory record of meeting community credit needs" under 12 U.S.C. Section 2906.

(e) On receipt of notice that the rating of a financial institution is changed to a rating below that required by this section, the treasurer shall take immediate action to transfer all state funds subject to the custody or control of the treasurer that are on deposit with the institution to a qualified financial institution.

(f) The depository contract between a regulated financial institution and the board must authorize the withdrawal without penalty of the state funds subject to the custody or control of the treasurer that are on deposit with the institution if the rating of the institution is changed to a rating below that required by Subsection (d).

SECTION 3. Section 404.022, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The board may execute a simplified version of a depository agreement with an eligible institution desiring to hold $98,000 or less in state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. The treasurer may give the institution contingent approval as a depository until the board's next scheduled meeting.

SECTION 4. Subchapter C, Chapter 404, Government Code, is amended by adding Section 404.0221 to read as follows:

Sec. 404.0221. ELIGIBLE COLLATERAL. (a) In this section, "public agency" means a board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, instrumentality of this state, or any other type of political or governmental entity of this state.

(b) For the purposes of Section 404.022, collateral eligible to be pledged with the treasurer to secure state deposits includes:

(1) direct obligations of or obligations the principal and interest of which are guaranteed by the United States government;

(2) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government; and

(3) a general or special obligation issued by a public agency and approved by the attorney general that is payable from taxes, revenues, or both.

(c) If pledged collateral consists of securities with a declining principal balance, the market value of the collateral pledged may not be less than 125 percent of the amount of the state deposits to be secured.

(d) Eligible collateral includes only a security with fixed, stated rates.

(e) A loss sustained by a depository that has secured its deposits by collateral may be enforced against the collateral.

(f) The treasurer may reject at any time collateral tendered by a state depository without assigning a reason for the rejection, and the treasurer's action is final and not subject to review.

(g) Collateral is not required for deposits to the extent that the deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

SECTION 5. Section 404.024, Government Code, is amended to read as follows:

Sec. 404.024. AUTHORIZED INVESTMENTS. (a) The board may determine and designate the amount of state funds to be deposited in time deposits in state depositories. The treasurer shall recommend to the board a maximum limit for state funds deposited by the treasurer at approved state depositories. The percentage of state funds to be deposited in state depositories shall be based on the interest rates available in competing investments, the demand for funds from Texas banks, and the state's liquidity requirements. The treasurer shall provide periodic investment reports to the board.

(b) State funds not deposited in state depositories shall be invested by the treasurer in:

(1) direct security repurchase agreements;

(2) reverse security repurchase agreements;

(3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;

(5) bankers' acceptances that:

(A) are eligible for purchase by the Federal Reserve System;

(B) do not exceed 270 days to maturity; and

(C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;

(6) commercial paper that:

(A) does not exceed 270 days to maturity; and

(B) except as provided by Subsection (i) [~~(f)~~], has received the highest short-term credit rating by a nationally recognized investment rating firm;

(7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading; [~~and~~]

(8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest credit rating by a nationally recognized investment rating firm; [~~and~~]

(9) bonds issued, assumed, or guaranteed by the State of Israel;

(10) obligations of a state or an agency, county, city, or other political subdivision of a state; and

(11) mutual funds secured by obligations that are described by Subdivisions (1) through (6).

(c) Investments in direct security repurchase agreements and reverse security repurchase agreements may be made with state or national banks doing business [~~domiciled~~] in this state or with primary dealers as approved by the Federal Reserve System. Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

(d) The board may contract with a depository for the payment of interest on time or demand deposits at a rate not to exceed a rate that is lawful under an Act of Congress and rules and regulations of the board of governors of the Federal Reserve System, the board of directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, [~~the Federal Savings and Loan Insurance Corporation,~~] and the Federal Home Loan Banking Board.

(e) The treasury may not purchase any of the following types of investments:

(1) obligations the payment of which represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations the payment of which represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index. [~~Not more than 20 percent of the aggregate funds on deposit in financial institutions at any time may be in depository institutions other than banks.~~]

(f) The treasurer by rule may define derivative investments other than those described by Subsection (e). The treasury may not purchase investments defined by rule adopted under this subsection in an amount that at the time of purchase will cause the aggregate value of the investments to exceed five percent of the treasury's total investments [~~The treasurer may invest the gross proceeds from obligations of this state or any agency of this state in:~~

[~~(1) obligations of a state or an agency, county, city, or other political subdivision of a state; and~~

[~~(2) mutual funds composed of obligations described by Subdivision (1)~~].

(g) To the extent practicable, the treasurer shall give first consideration to Texas banks when investing in direct security repurchase agreements.

(h) [~~The treasurer may not use state funds to invest in or purchase obligations of a private corporation or other private business entity doing business in the Republic of South Africa unless the corporation or other entity:~~

[~~(1) has:~~

[~~(A) adopted the Statement of Principles for South Africa as they existed in 1987, as described in the~~ Report on the Signatory Companies to the Statement of Principles for South Africa ~~published by Arthur D. Little, Inc., Cambridge, Massachusetts, and has obtained a performance rating in Category 1 or 2 of the Statement of Principles for South Africa rating system as determined by Arthur D. Little, Inc.; or~~

[~~(B) agreed to the Code of Conduct that is enforced by the United States Department of State under Section 208, Comprehensive Anti-Apartheid Act of 1986 (Pub. L. No. 99-440) and has received a rating of "Making Satisfactory Progress"; and~~

[~~(2) does not supply strategic products or services for use by the government, military, or police of the Republic of South Africa.~~

[~~(i) For the purposes of Subsection (h) of this section:~~

[~~(1) "Doing business in the Republic of South Africa" means conducting or performing manufacturing, assembly, or warehousing operations within the Republic of South Africa or, if a bank or other financial institution, lending money to the government of the Republic of South Africa or any of its agencies or instrumentalities.~~

[~~(2) "Strategic products or services" means articles designated as arms, ammunition, or implements of war as provided by 22 Code of Federal Regulations Part 121 or data processing equipment or computers sold for military or police use or for use in connection with restrictions on travel within the Republic of South Africa by residents of that country.~~

[~~(j)~~] The treasurer may not use state funds to invest in or purchase obligations of a private corporation or other private business entity doing business in Northern Ireland unless the corporation or other entity:

(1) adheres to fair employment practices; and

(2) does not discriminate on the basis of race, color, religion, sex, national origin, or disability.

(i) [~~(k)~~] Notwithstanding Subsection (b)(6)(B) [~~(a)(6)(B)~~], the treasurer may purchase commercial paper with a rating lower than the rating required by that paragraph [~~subsection~~] to provide liquidity for commercial paper issued by the treasurer or an agency of the state.

SECTION 6. Subsection (c), Section 404.0245, Government Code, is amended to read as follows:

(c) The principal amount of state funds invested and outstanding in hedging transactions on any one day may not exceed $500,000 with a maximum risk of loss of $5,000,000 in a biennium. The total principal amount of state funds that may be invested by the [~~state~~] treasurer in hedging transactions during any one biennium may not exceed the amount of money credited to the unclaimed money fund for that biennium and attributable to the remittance of mineral proceeds under Chapter 75, Property Code. Any premium incurred in connection with hedging transactions may be paid only from funds appropriated for that purpose.

SECTION 7. The heading of Subchapter D, Chapter 404, Government Code, is amended to read as follows:

SUBCHAPTER D. COLLATERAL, DEPOSITS, AND WITHDRAWALS [~~TREASURER AS SECRETARY OF BOARD~~]

SECTION 8. The heading of Section 404.031, Government Code, is amended to read as follows:

Sec. 404.031. COLLATERAL REQUIREMENTS.

SECTION 9. Subsections (b), (e), (g), and (j), Section 404.031, Government Code, are amended to read as follows:

(b) If the market value of the securities pledged by a depository becomes less than the amount of funds on deposit in the depository, the treasurer shall require that additional collateral be pledged immediately or deposits reduced [~~security~~]. If the collateral pledged by a state depository is in excess of the amount required by this chapter, the treasurer may permit the release of the excess collateral [~~security~~]. If the balance of state funds in a state depository is increased, the depository shall increase the collateral [~~security~~] for the deposits to the amount required by this chapter.

(e) Instead of depositing pledged securities with the treasurer, a depository may deposit them with a custodian. The custodian may be the Texas Treasury Safekeeping Trust Company or a state or national bank that has a capital stock and permanent surplus of not less than $5 million, is [~~has been designated~~] a state depository, and has been designated as a custodian by the treasurer. The state depository and the custodian of securities pledged by that state depository may not be the same bank or be owned by the same bank holding company. The securities shall be held in trust by the custodian to secure funds deposited by the treasurer in the state depository pledging the securities. On receipt of the securities, the custodian shall immediately, by book entry or otherwise, identify on its books and records the pledge of the securities and shall promptly issue and deliver to the treasurer controlled trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the treasurer [~~board or its agents~~] at any time. The depository pledging the securities shall pay the charges, if any, of the custodian bank for accepting and holding the securities. The [~~A~~] custodian [~~bank~~], acting alone or through a permitted institution, is for all purposes under state law and notwithstanding Chapters 8 and 9, Business & Commerce Code, the bailee or agent of the treasurer. The security interest arising out of a pledge of securities to secure deposits of the state is created, attaches, and is perfected for all purposes under state law from the time the custodian identifies the pledge of the securities on its books and records and issues the trust receipts. The security interest remains perfected as of that time in the hands of all subsequent custodians and permitted institutions.

(g) In this section, "permitted institution" means a Federal Reserve Bank, a Federal Home Loan Bank, a "clearing corporation" as defined by Section 8.102(c), Business & Commerce Code, the Texas Treasury Safekeeping Trust Company, a state depository, and any state or nationally

chartered bank or trust company that is controlled by a bank holding company that controls a state depository. Neither the state depository that pledges the securities nor any bank that is controlled by a bank holding company that controls that state depository may be the permitted institution with respect to the particular securities pledged by that state depository. A custodian holding in trust securities of a state depository under Subsections [~~Subsection~~] (e) and (f) may deposit the pledged securities with a permitted institution if the permitted institution is the third party to the transaction. The securities shall be held by the permitted institution to secure funds deposited by the treasurer in the state depository pledging the securities. On receipt of the securities, the permitted institution shall immediately issue to the custodian an advice of transaction or other document evidencing the deposit of the securities. When the pledged securities held by a custodian are deposited, the permitted institution may apply book entry procedures to the securities. The records of the permitted institution shall at all times reflect the name of the custodian depositing the pledged securities. The custodian shall immediately issue and deliver to the treasurer controlled trust receipts for the pledged securities. The trust receipts shall indicate that the custodian has deposited with the permitted institution the pledged securities held in trust for the state depository pledging the securities. A legal action or proceeding brought by or against the state, arising out of or in connection with the duties of the state depository, the custodian, or other permitted institution under this subchapter must be brought and maintained in state district court in Travis County. In this section, "control" and "bank holding company" have the meanings assigned by Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes).

(j) If a state depository fails to credit [~~pay~~] a deposit or part of a deposit made by [~~on the check of~~] the treasurer, the treasurer may immediately sell or otherwise convert the securities to money [~~and disburse the money, according to law, on warrants drawn by the comptroller on the funds which the securities secured~~].

SECTION 10. The heading of Section 404.032, Government Code, is amended to read as follows:

Sec. 404.032. DEPOSITS [~~AND INVESTMENTS~~].

SECTION 11. Subsection (a), Section 404.032, Government Code, is amended to read as follows:

(a) The treasurer shall deposit state funds in depositories that satisfy the collateral [~~security~~] requirements of this chapter [~~or invest the funds in investments authorized by Section 404.024~~]. The treasurer may deposit funds designated as demand deposits only in institutions [~~banks~~] designated as [~~centrally located depositories and in other~~] depositories [~~authorized~~] by the board.

SECTION 12. Section 404.043, Government Code, is amended to read as follows:

Sec. 404.043. SECURITY OFFICERS. The treasurer may [~~shall~~] employ security officers to provide needed security services for the

treasury and may commission the officers as peace officers. The security officers shall give bond in the same manner required by this chapter for employees who handle money or other valuable property as part of their duties.

SECTION 13. Section 404.047, Government Code, is amended to read as follows:

Sec. 404.047. ACCOUNTS. The treasurer shall keep accounts of the receipt and expenditure of the money in the treasury and close the accounts on August 31 of each year. The treasurer shall keep proper records [~~legal vouchers~~], distinguishing between the receipts and disbursements of each fiscal year.

SECTION 14. Section 404.048, Government Code, is amended to read as follows:

Sec. 404.048. REPORT. In addition to the reports required by the constitution, the treasurer shall, as required by [~~submit to the governor on the first Monday in November of each year, and at other times~~] the governor [~~requires~~], submit [~~an exact statement of the condition and situation of the treasury;~~] a statement of the balance of money remaining in the treasury [~~to the credit of the state;~~] and a summary of the receipts and disbursements recorded by [~~of~~] the treasury [~~during the preceding year or for another period of time that may be specially required~~]. The treasurer shall exhibit all books, papers, and records [~~vouchers, and other matters pertaining to the office for examination~~] on request by the legislature or a branch or committee of the legislature.

SECTION 15. Subsections (b), (d), and (f), Section 404.052, Government Code, are amended to read as follows:

(b) The [~~state~~] treasurer shall deposit money received by the treasurer under this section and shall keep a separate account for each municipality, district, or political subdivision. The payment of interest and principal due on an obligation of the municipality, district, or political subdivision must be on deposit with the treasurer not later than five business days before the date of maturity. Any charges incurred for late receipt of funds shall be assessed to the municipality, district, or political subdivision. [~~As payment of interest and principal becomes due on an obligation, the treasurer of the municipality, district, or political subdivision shall remit to the state treasurer, not later than the 15th day before the date of maturity, the amounts due or to become due on maturity.~~] On receipt of those amounts by the [~~state~~] treasurer, the treasurer [~~of the municipality, district, or political subdivision~~] shall request the comptroller to issue a warrant [~~to the state treasurer~~] for the payment of amounts due[~~, and the state treasurer shall pay the same at the office of the state treasurer. The warrant shall state on its face:~~

[~~(1) that the proceeds of the warrant are to be applied by the state treasurer to the payment of certain specified bonds or interest coupons described in the warrant;~~

[~~(2) the name of the municipality, district, or political subdivision that issued the obligations;~~

[~~(3) the numbers, amounts, and dates of maturity of the obligations and interest to be paid; and~~

[~~(4) instructions to the state treasurer to return the obligation to the treasurer of the municipality, district, or political subdivision on receipt~~].

(d) The [~~state~~] treasurer shall collect for the use of the state from the municipality, district, or political subdivision a fee in an amount established by rule of the [~~state~~] treasurer that is sufficient to pay the [~~state~~] treasurer's cost of administration. The treasurer of the municipality, district, or political subdivision, at the time of the remittance for the payment of the maturing obligation or interest, shall remit the fee to the [~~state~~] treasurer as ex officio treasurer of the municipality, district, or political subdivision. On receipt of the fee, the [~~state~~] treasurer shall deposit [~~credit~~] it to the appropriate fund [~~fees earned~~]. The amount of the fees earned, or as much as necessary, is reserved to the [~~state~~] treasurer to be used in the administration of this chapter. Any balance remaining at the end of a fiscal year is available for use in the next fiscal year.

(f) The [~~state~~] treasurer shall cancel and return to the municipality, district, or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds the coupons and bonds that have matured or been retired by purchase, together with a statement of the account of the municipality, district, or subdivision showing the amounts received and placed to its credit, service charges, and amount of coupons or bonds retired. At the request of the municipality, district, or political subdivision, the [~~state~~] treasurer shall remit to the municipality, district, or subdivision any balance remaining in custody of the treasurer for more than two years for which bonds or coupons have not been presented for payment. The municipality, district, or political subdivision shall pay these coupons or bonds when presented. A municipality, district, or political subdivision is entitled at any reasonable time to a statement of its account with the [~~state~~] treasurer.

SECTION 16. Section 404.055, Government Code, is amended to read as follows:

Sec. 404.055. TIME AND DEMAND DEPOSITS[~~; RECORDS AND ANNUAL REPORT~~]. [~~(a)~~] The treasurer shall maintain records of the daily balances of and the interest income from funds deposited by the treasurer [~~or the board~~] in time and demand deposit accounts in each bank acting as a state depository. The treasurer shall maintain and preserve those records according to the provisions of Subchapter D, Chapter 441, [~~the Preservation of Essential Records Act (Article 5441d, Vernon's Texas Civil Statutes)~~] and of the open records law, Chapter 552 [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)~~].

[~~(b) The treasurer annually shall make a complete report to the legislature and to the governor of the amounts of interest income earned on funds deposited by the treasurer or the board in each state depository. The report must contain the following:~~

[~~(1) the name of each institution serving as a state depository during the fiscal year;~~

[~~(2) for each institution, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in demand deposit accounts placed by the treasurer or the board;~~

[~~(3) for each institution, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, the average daily balance in time deposit accounts placed by the treasurer or the board, and the amount of interest income earned on those accounts; and~~

[~~(4) the totals of those amounts aggregated for all state depositories.~~]

SECTION 17. Section 404.060, Government Code, is amended to read as follows:

Sec. 404.060. PRIORITY OF WARRANTS. Warrants on the treasury shall be on an equal basis with each other, except that if a question arises concerning the priority of payment of the warrants the treasurer shall determine the priority of payment [~~and necessity requires, they shall be paid in order of their serial number within each account.~~

[~~This section does not apply to:~~

[~~(1) warrants drawn on the game, fish, and water safety account or on funds collected for and appropriated to the Texas Department of Transportation;~~

[~~(2) a special fund created or provided for in the constitution; or~~

[~~(3) a special fund or account consisting of taxes set aside and remitted or donated by the legislature to a county or municipality~~].

SECTION 18. Section 404.062, Government Code, is amended to read as follows:

Sec. 404.062. UNDETERMINED REMITTANCES [~~DAILY STATEMENT~~]. (a) [~~The head of each department shall send to the treasurer daily a detailed list of persons remitting money the status of which is undetermined or that is awaiting the time when it can be taken into the treasury and the departments' remittances to the treasury. The treasurer shall cash the remittances and place them in the treasury vaults or in legally authorized depository banks if the necessity arises.~~

[~~(b) The report from the General Land Office shall include all money for interest, principal, and leases of school, university, asylum, and other lands.~~

[~~(c)~~] This subsection applies to money the status of which is undetermined or that is awaiting the time when it can be taken into the treasury. The money shall be placed with the treasurer and credited to the suspense account. The treasurer shall request and maintain information about the deposit of funds into the suspense account in accordance with Section 403.052.

(b) [~~(d)~~] When the status of money placed in the suspense account is determined, the money shall be transferred from the suspense account by placing the portion of it belonging to the state in the appropriate fund in the treasury, and the part not belonging to the state shall be refunded. The refund shall be made either to the payor of the money or to the payor's estate, assignee, devisee, or other successor-in-interest.

(c) [~~(c)~~] When a deposit is made, it and any refunds shall be entered in the suspense cash book, and the balance shall represent the aggregate of the items still in suspense. Warrants shall be used for making refunds. The warrants shall be charged against the suspense funds to which they apply.

SECTION 19. Section 404.064, Government Code, is amended to read as follows:

Sec. 404.064. OFFICE FEES [~~FEE BOOK~~]. The treasurer shall keep records of [~~an office fee book in which the treasurer shall enter in detail~~] the fees earned by the treasury department. Those fees shall be deposited to the appropriate fund in the treasury [~~at the end of each month to the credit of the general revenue fund~~].

SECTION 20. Section 404.065, Government Code, is amended to read as follows:

Sec. 404.065. CASH BALANCING [~~BOOK~~]. The treasurer shall keep records [~~a book, to be called the cash balancing book,~~] for the purpose of arriving at the daily cash balance. The daily totals of receipts and disbursements and the amount of cash on hand and in depository banks shall be recorded [~~entered in the book. A copy of the book entry for each day shall be furnished daily to the comptroller~~].

SECTION 21. Section 404.067, Government Code, is amended to read as follows:

Sec. 404.067. SAFEKEEPING; INVESTMENT AGENCIES [~~BOND BOOK~~]. (a) The treasurer shall keep custodial records that [~~a bond book in which~~] shall reflect all deposits and releases of securities [~~be entered warrants or authorizations to receive or relinquish bonds~~] held by the treasurer and belonging to a state investment agency [~~fund~~].

(b) The treasurer shall keep appropriate ledger accounts that include a short description [~~of the essential features~~] of each security held in safekeeping for certain investment agencies of the state[~~, of each bond or of each purchase of similar bonds or other securities purchased by and belonging to the permanent school fund and other funds of the state. Those accounts shall be charged with the principal of the bond or purchase and with each separate item of interest to accrue to the principal and shall be credited with payments as made~~].

(c) The treasurer shall keep controlling or total accounts of [~~bonds or other~~] securities in the general ledger. Those accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund.

(d) [~~The treasurer shall keep controlling accounts for interest to accrue on the bonds. The accounts shall be set up at the beginning of the fiscal year for bonds or other securities owned at that time and for subsequent purchases when the bonds or securities are purchased.~~

[~~(c)~~] Those controlling accounts shall be balanced monthly with the sum of the individual accounts for [~~bonds or~~] securities, which also shall be balanced monthly, and shall correspond to similar accounts kept by the comptroller.

SECTION 22. Section 404.068, Government Code, is amended to read as follows:

Sec. 404.068. STATE REGULATORY AGENCIES SAFEKEEPING AND PLEDGED COLLATERAL [~~SECURITIES REGISTER~~]. (a) The treasurer shall keep a suitable system [~~register~~] in which shall be entered all [~~bonds, cash, and other~~] securities deposited with the treasurer by [~~bond investment, surety, and insurance companies and~~] state depositories [~~depository banks~~] and other state agencies [~~all other bonds or securities deposited with the treasurer under a statute if the registration of the bonds or securities is not otherwise provided for by law~~]. The treasurer shall enter in the system [~~register~~] the authorizations to deposit [~~receive~~] or release [~~relinquish~~] the [~~bonds or~~] securities.

(b) The treasurer shall keep a securities ledger in which appropriate accounts for each custodial agency are kept [~~all matters for which those authorizations are issued shall be kept~~]. That ledger shall be balanced monthly against control accounts kept in the general ledger and against corresponding accounts kept by the comptroller.

SECTION 23. Section 404.070, Government Code, is amended to read as follows:

Sec. 404.070. VALIDITY OF VOIDED WARRANTS [~~PAYABLE FROM A SUSPENSE OR TRUST FUND~~]. (a) A warrant issued by the comptroller in payment of refunds from a [~~suspense or trust~~] fund in the treasury becomes void unless presented to the treasurer for payment before two years after the end of the fiscal year in which the warrant was issued. The sum of money represented by a warrant voided under this section shall be transferred by the comptroller from the [~~suspense~~] fund from which the warrant was originally issued to the general revenue fund. Claims for the payment of a voided warrant may be presented to the legislature for appropriation from which the warrant may be paid. This section does not affect the laws regulating the payment of other warrants issued by the comptroller.

(b) When a transfer of money under this section is made, the treasurer shall prepare a list of the outstanding warrants representing the transfer. The list must show [~~the name of the payee,~~] the date of the original warrant, the departmental suspense account against which the warrant was originally drawn, the original warrant number, and the amount of the original warrant. The list shall be maintained as a permanent record in the office of the treasurer [~~and proper notation shall be made on each entry on the list when the legislature makes appropriation for the refund of the amount listed~~].

SECTION 24. Subsection (e), Section 404.071, Government Code, is amended to read as follows:

(e) The treasurer shall provide the comptroller information necessary for [~~notify~~] the comptroller to compute [~~of~~] the amount of interest to be paid from the general revenue fund as a result of the federal Cash Management Improvement Act of 1990 (31 U.S.C. Section 6501 et seq.). The treasurer shall provide the information [~~notifications~~] in accordance with the comptroller's requirements for frequency, method, and format.

SECTION 25. Section 404.095, Government Code, is amended to read as follows:

Sec. 404.095. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS. (a) This section applies only to a state agency that during the preceding state fiscal year collected or received more than $50 million in fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds, excluding federal grants and interest and dividend income.

(b) If during the preceding state fiscal year a person paid a state agency a total of $500,000 or more in a category of payments and the agency reasonably anticipates that during the current state fiscal year the person will pay the agency $500,000 or more in a category of payments, the state agency shall require the person to transfer payment amounts [~~of $25,000 or more~~] due to the agency in that category, on or before the date the payment is due, by one [~~or more~~] of the means of electronic funds transfer approved by the treasurer. For the purposes of this section, each of the following is a separate category of payments to a state agency:

(1) fees;

(2) fines;

(3) civil penalties;

(4) taxes, with each type of tax specified by the treasurer being considered a separate category; and

(5) other payments to the state agency, excluding extraordinary payments such as gifts, grants, donations, interest and dividend income, and one time surcharges.

(c) A state agency by rule may require a person other than a person subject to Subsection (b) to transfer all payment amounts [~~of $10,000 or more~~] due in a category of payments to the agency on or before the date the payment is due by electronic funds transfer [~~if the person paid the agency a total of $250,000 or more in that category of payments~~].

(d) A person's failure to transfer payment amounts by electronic funds transfer may result in the assessment of a penalty by the state agency in an amount equal to five percent of the payment amount.

(e) The treasurer shall adopt rules specifying approved means of electronic funds transfer and specifying the types of taxes constituting separate categories. A person's failure to comply with the rules may result in the assessment of a penalty by the state agency in an amount equal to five percent of the payment amount.

(f) [~~(e)~~] To the extent of any conflict between this section and another law specifying the time or manner of making a payment to the agency, this section controls. This section does not affect a law specifying the time for the filing of a return or other report related to the payment.

(g) [~~(f)~~] A state agency may not require payment by electronic funds transfer of a protested tax payment.

SECTION 26. Section 404.105, Government Code, is amended to read as follows:

Sec. 404.105. CAPITAL OR RESERVE REQUIREMENTS. The trust company shall have capital stock or reserve balances in an amount required by applicable regulatory bodies for eligibility for federal reserve services, but the amount may not be more than $1 million. The stock of the trust

company is an authorized investment for state funds and[~~,~~] shall be held by the treasurer[~~, and shall be acquired by the treasurer on an order of the state depository board~~].

SECTION 27. Section 404.106, Government Code, is amended by adding Subsection (c) to read as follows:

(c) With respect to specific funds held by the trust company for a particular participant, the trust company has the same investment authority as that participant for those specific funds.

SECTION 28. Section 404.121, Government Code, is amended to read as follows:

Sec. 404.121. DEFINITIONS. In this subchapter:

(1) "Cash flow deficit" for any period means the excess, if any, of expenditures paid and transfers made from the general revenue fund in the period, including payments provided by Section 16.260, Education Code, over taxes and other revenues deposited to the fund in the period, other than revenues deposited pursuant to Section 403.092, that are legally available for the expenditures and transfers.

(2) "Committee" means the cash management committee.

(3) [~~(2)~~] "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase tax and revenue anticipation notes, purchase or sale agreement, forward payment conversion agreement, contract providing for payments based on levels of or changes in interest rates or currency exchange rates, or commitment or other contract or agreement approved by the treasurer in connection with the authorization, issuance, security, exchange, payment, purchase, or redemption of an obligation, interest on an obligation, or both.

(4) [~~(3)~~] "Tax and revenue anticipation notes" and "notes" mean notes issued under this section, including any obligations under credit agreements entered into by the treasurer in connection with the issuance of the notes.

(5) [~~(4)~~] "Temporary cash shortfall" during any period means the greater of:

(A) the [~~cumulative~~] cash flow deficit forecast by the treasurer for the [~~at any time during a~~] period; or

(B) [~~within a fiscal year in which~~] the cash balance of taxes and other revenues in the general revenue fund at the beginning of the period that are legally available for expenditures and transfers included in the cash flow deficit, other than transfers deposited pursuant to Section 403.092, less the cash flow deficit for the period and less[~~, as projected by the treasurer, is insufficient to honor the authorized expenditures from that fund during that period and to establish~~] an amount determined by the treasurer that is reasonably required as a cash balance in the general revenue fund, but the reasonable account balance may not exceed 10 percent of expenditures and transfers made from the general revenue fund in the fiscal year before the year in which the determination is made.

SECTION 29. Subsection (d), Section 404.123, Government Code, is amended to read as follows:

(d) All notes must mature and be paid in full during the fiscal biennium in which they were issued. The notes must be signed by the governor. [~~The interest rate on the notes must be set so that the amount equal to the total amount of interest to be paid on the notes plus the costs of issuance of the notes does not exceed the amount of interest that would be paid on the notes if the interest rate on the notes were one percent less than one of the following, as computed by the treasurer:~~

[~~(1) the average interest yield being earned on funds invested by the treasurer as of the date of the notes' issuance; or~~

[~~(2) the projected average interest yield to be earned on funds invested by the treasurer over the life of the note issue.~~]

SECTION 30. Subsections (b) and (c), Section 404.124, Government Code, are amended to read as follows:

(b) Based on the forecast the committee may approve the issuance of notes and the maximum outstanding balance of notes in any fiscal year. The outstanding balance may not exceed the maximum temporary cash shortfall forecast by the treasurer for any period in the fiscal year. The treasurer may not issue notes in excess of the amount approved [~~the amount of notes that may be issued and determine whether the notes shall be sold on a negotiated or competitive bid basis. If the committee determines that competitive bids are appropriate, the underwriter of any notes issued under this section shall be selected by the solicitation of sealed bids and an appropriate bid notice shall be published at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications of general circulation published outside the state. Unless all bids are rejected, the underwriter shall be selected from the bids received~~].

(c) The committee may determine whether the notes will be sold on a negotiated or competitive bid basis. If the committee determines that competitive bids are appropriate, the underwriter of any notes issued under this section shall be selected by the solicitation of sealed bids and an appropriate bid notice shall be published at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications of general circulation published outside the state. Unless all bids are rejected, the underwriter shall be selected from the bids received. The treasurer may not sell the notes in a manner not approved. [~~The committee may not approve the issuance of notes in excess of the amount reasonably necessary to meet the temporary cash shortfall. The treasurer may not issue notes in excess of the amount approved or sell the notes in a manner not approved.~~]

SECTION 31. The following provisions are repealed:

(1) Subsections (e) and (f), Section 404.0245, and Sections 404.025 and 404.061, Government Code; and

(2) Section 2, Chapter 234, Acts of the 73rd Legislature, 1993.

SECTION 32. (a) A regulated financial institution that is acting as a depository of funds subject to Section 404.0212, Government Code, as added by this Act, on the effective date of this Act and that does not have

an assigned rating under 12 U.S.C. Section 2906 that satisfies the requirement of that section may continue to hold the funds only for the period necessary to avoid the imposition of a penalty on the state.

(b) Subsection (f), Section 404.0212, Government Code, as added by this Act, applies only to depository contracts executed on or after the effective date of this Act.

SECTION 33. This Act takes effect immediately, except that a state depository approved before the effective date of this Act and operating as a state depository on the effective date of this Act is not required to meet a requirement of Chapter 404, Government Code, as amended or added by this Act, and a state or federal credit union may not be designated as a state depository, until January 1, 1996.

SECTION 34. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Ellis moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1128** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Ratliff, West, Bivins, and Rosson.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 870 ADOPTED

Senator Madla called from the President's table the Conference Committee Report on **S.B. 870**. The Conference Committee Report was filed with the Senate on Wednesday, May 24, 1995.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1231 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 1231**. The Conference Committee Report was filed with the Senate on Wednesday, May 24, 1995.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **H.B. 1863** by a record vote of 128 Ayes, 19 Nays, and 2 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 1231** by a non-record vote.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE CONCURRENT RESOLUTION 101 WITH HOUSE AMENDMENT

Senator Patterson called **S.C.R. 101** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.C.R. 101** as follows:

On page 2, line 23, between "the" and "Texas", strike "U.S.S." and substitute "battleship".

The amendment was read.

On motion of Senator Patterson and by unanimous consent, the Senate concurred in the House amendment to **S.C.R. 101** by a viva voce vote.

SENATE CONCURRENT RESOLUTION 136 WITH HOUSE AMENDMENT

Senator Sibley called **S.C.R. 136** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.C.R. 136** by striking it in its entirety and substituting the following:

RESOLUTION

WHEREAS, Each year 13,000 men in Texas are diagnosed with prostate cancer, causing it to be a major public health problem; and

WHEREAS, Prostate cancer is the second leading cause of cancer deaths for Texas men, with 2,200 men dying each year or about 11 percent of all cancer deaths among men in Texas; and

WHEREAS, Early detection of prostate cancer is critical to the preservation of life and health care strategies for those at risk of prostate cancer; and

WHEREAS, the American Cancer Society recommends that every man age 40 and older should have a digital rectal examination as part of his regular annual physical checkup, and every man age 50 and older should have an annual prostate-specific antigen blood test; and

WHEREAS, The American Cancer Society reports that survival rates for all stages of prostate cancer have steadily improved, increasing from 50 percent to 80 percent in the past 30 years; and

WHEREAS, African-American Texans have the highest incidence and mortality rates from prostate cancer; and

WHEREAS, It is in the public interest of this state to promote public awareness of the benefits and values of the early detection, prevention, and treatment of prostate cancer; and

WHEREAS, Improved public awareness of the disparity in funding for prostate cancer research, as compared to the research funding for other major killer diseases, will help bring a halt to this inequity and thereby save men's lives; and

WHEREAS, The Congress of the United States of America has designated a week as Prostate Cancer Awareness Week in an effort to promote education, awareness, and understanding of this disease, and it is appropriate for the Lone Star State to join men, their families, and loved ones throughout Texas in recognizing the importance of this disease; now, therefore, be it

RESOLVED, That the 74th Legislature of the State of Texas hereby designates the week of each year that begins with Father's Day as Texas Prostate Cancer Awareness Week, to promote the early detection and treatment of prostate cancer, for the preservation of lives, and to encourage men to have an annual examination.

The amendment was read.

On motion of Senator Sibley and by unanimous consent, the Senate concurred in the House amendment to **S.C.R. 136** by a viva voce vote.

SENATE JOINT RESOLUTION 46 WITH HOUSE AMENDMENT

Senator Harris called **S.J.R. 46** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.J.R. 46** as follows:

(1) On page 1, lines 11 and 12 between "property" and "by", strike "[~~designated as a homestead~~]".

The amendment was read.

Senator Harris moved to concur in the House amendment to **S.J.R. 46.**

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 44 WITH HOUSE AMENDMENT

Senator Shapiro called **S.B. 44** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 44** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the provision of good conduct time to inmates sentenced to the institutional division of the Department of Criminal Justice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 498.001(1), Government Code, is amended to read as follows:

(1) "Inmate" means a person imprisoned [~~confined~~] by order of a court [~~in the institutional division~~], whether the person is actually imprisoned [~~confined~~] in a facility operated by or under contract with the institutional division [~~the institution~~] or is under the supervision or custody of the pardons and paroles division.

SECTION 2. Section 498.002, Government Code, is amended to read as follows:

Sec. 498.002. CLASSIFICATION AND RECLASSIFICATION. The department [~~institutional division~~] shall classify each inmate as soon as practicable on the inmate's arrival at the institutional division or a transfer facility and, subject to the requirements of Section 498.005, shall reclassify the inmate as circumstances warrant. Each inmate must be classified according to the inmate's conduct, obedience, and industry[~~, and criminal history~~]. The department [~~director of the institutional division~~] shall maintain a record on each inmate showing each classification and reclassification of the inmate with the date and reason for each classification or reclassification. The department [~~institutional division~~] may classify each inmate on the inmate's arrival at the institutional division or a transfer facility in a time-earning category that does not allow the inmate to earn more than 30 days' good conduct time for each 30 days actually served.

SECTION 3. Section 498.003, Government Code, is amended to read as follows:

Sec. 498.003. ACCRUAL OF GOOD CONDUCT TIME. (a) Good conduct time applies only to eligibility for parole or mandatory supervision as provided by Section 8, Article 42.18, Code of Criminal Procedure, and does not otherwise affect an inmate's term. Good conduct time is a privilege and not a right. Regardless of the classification of an inmate,

the department [~~director of the institutional division~~] may grant good conduct time to the inmate only if the department [~~director~~] finds that the inmate is actively engaged in an agricultural, vocational, or educational endeavor or in an industrial program or other work program, unless the department [~~director~~] finds that the inmate is not capable of participating in such an endeavor.

(b) An inmate accrues good conduct time according to the inmate's classification in amounts as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a trusty, except that the department [~~director of the institutional division~~] may award the inmate not more than 10 extra days for each 30 days actually served;

(2) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate; and

(3) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate.

(c) An inmate may not accrue good conduct time during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

(d) An inmate may accrue good conduct time, in an amount determined by the department [~~director of the institutional division~~] that does not exceed 15 days for each 30 days actually served, for diligent participation in an industrial program or other work program or for participation in an agricultural, educational, or vocational program provided to inmates by the department [~~institutional division~~]. For the purposes of this subsection, the term "participation in an educational program" includes the participation of the inmate as a tutor or a pupil in a literacy program authorized by Section 501.005. The department [~~institutional division~~] may not award good conduct time under this subsection for participation in a literacy program unless the department [~~division~~] determines that the inmate participated in good faith and with diligence as a tutor or pupil.

(e) If a person is confined in a county jail [~~or a transfer facility operated by the institutional division is transferred to any other facility of the institutional division for confinement purposes~~], the department [~~director of the institutional division~~] shall award good conduct time to the person up to an amount equal to the amount earned by an inmate in the entry level time earning class [~~that which the person could have accrued during the period of confinement in the county jail or transfer facility if instead the person had been imprisoned in the division during that period~~]. The department [~~director of the institutional division~~] shall award good conduct time to a defendant for diligent participation in a voluntary work program operated by a sheriff under Article 43.101, Code of Criminal Procedure, in the same manner as if the inmate had diligently participated in an industrial program or other work program provided to inmates by the department [~~institutional division~~]. The sheriff of each county shall have attached a certification of the number of days each inmate diligently participated in the volunteer work program operated by the sheriff under Article 43.101, Code of Criminal Procedure.

SECTION 4. Section 498.004, Government Code, is amended to read as follows:

Sec. 498.004. FORFEITURE AND RESTORATION OF GOOD CONDUCT TIME. (a) If, during the actual term of imprisonment of an inmate in the institutional division or in a transfer facility, the inmate commits an offense or violates a rule of the division, the department [~~director of the institutional division~~] may forfeit all or any part of the inmate's accrued good conduct time. The department [~~director of the institutional division~~] may not restore good conduct time forfeited under this subsection [~~subject to rules adopted by the institutional division~~].

(b) On the revocation of parole or mandatory supervision of an inmate, the inmate forfeits all good conduct time previously accrued. On return to the institutional division the inmate may accrue new good conduct time for subsequent time served in the division. The department [~~director of the institutional division~~] may not restore good conduct time forfeited on a revocation [~~that does not involve a new criminal conviction after the inmate has served at least three months of good behavior in the institutional division, subject to rules adopted by the division.~~] [~~Not later than the 60th day after the date an inmate is returned to the institutional division following a revocation of parole or mandatory supervision, the pardons and paroles division shall notify the director of the institutional division of the grounds for revocation~~].

SECTION 5. Section 498.005, Government Code, is amended to read as follows:

Sec. 498.005. ANNUAL REVIEW OF CLASSIFICATION; [~~RESTORATION OF GOOD TIME;~~] RETROACTIVE AWARD OF GOOD TIME. At least annually, the board shall review the institutional division's policies [~~rules~~] relating to [~~restoration of good conduct time that has been forfeited,~~] the manner in which inmates are classified and reclassified, and the manner in which additional good conduct time is awarded retroactively to inmates who have been reclassified. [~~The board shall consider in its review whether the inmate overcrowding in the institutional division has decreased and whether it is necessary for purposes of decreasing overcrowding to classify inmates according to Section 498.002 to restore good conduct time under Section 498.004, or to award additional good conduct time retroactively to inmates who have been reclassified. If the board determines that overcrowding has decreased and it is not necessary to restore good conduct time or award additional good conduct time, it shall direct the institutional division to discontinue those practices.~~]

SECTION 6. Section 499.154, Government Code, is amended to read as follows:

Sec. 499.154. CUSTODY STATUS; GOOD CONDUCT TIME. An inmate described by Section 499.152 confined in a transfer facility authorized by this subchapter earns good conduct time in the same manner and subject to the same rules as if the inmate were confined in [~~a county jail awaiting transfer to~~] the institutional division.

SECTION 7. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Shapiro and by unanimous consent, the Senate concurred in the House amendment to **S.B. 44** by a viva voce vote.

SENATE CONCURRENT RESOLUTION 89 WITH HOUSE AMENDMENT

Senator Haywood, on behalf of Senator Sims, called **S.C.R. 89** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.C.R. 89** as follows:

(1) In the second Whereas clause, after "North Central Texas" insert "and the Corinth Street Viaduct in Dallas County".

(2) In the first Resolved clause, after "highway traffic" insert "the Corinth Street viaduct in Dallas County and".

The amendment was read.

On motion of Senator Haywood, on behalf of Senator Sims, and by unanimous consent, the Senate concurred in the House amendment to **S.C.R. 89** by a viva voce vote.

SENATE BILL 74 WITH HOUSE AMENDMENT

Senator Patterson called **S.B. 74** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 74**, Section 1, page 3, line 3, by inserting the words "the state or" after the word "by" and before the words "a political subdivision".

Amend **S.B. 74**, by striking Sec. 239.001(a) in its entirety and substituting the following therefore:

Sec. 239.001. REQUIRING REPAIR, REMOVAL, OR DEMOLITION OF BUILDING OF OTHER STRUCTURE. (a) If the commissioners court

of a county that borders the Gulf of Mexico and is adjacent to a county with a population of more that 2.5 million finds that a bulkhead or other method of shoreline protection, (hereafter called structure), in an unincorporated area of the county is likely to endanger persons or property, the commissioners may:

Amend **S.B. 74**, page 3, line 3, by striking the period after "state" and replacing with "; or" and adding a section (c)(3) to read:

(3) a building or structure used on or in connection with an agriculture operation.

The amendment was read.

Senator Patterson moved to concur in the House amendment to **S.B. 74**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 111 WITH HOUSE AMENDMENTS

Senator Shapiro called **S.B. 111** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 111** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to conditions of community supervision, parole, and release on mandatory supervision for defendants charged with or convicted of certain sexual offenses against or involving children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 42.12, Code of Criminal Procedure, is amended by amending Subsection (b) and by adding Subsection (f) to read as follows:

(b) Except as provided by Subsection (f), in [~~In~~] a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is 10 years.

(f) The minimum period of community supervision for a felony described by Section 13B(b) is five years and the maximum period of supervision is 10 years.

SECTION 2. Subsections (a) and (c), Section 5, Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an

adjudication of guilt, and place the defendant on community supervision. The judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

(c) On expiration of a community supervision period imposed under Subsection (a) of this section, if the judge has not proceeded to adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge him. The judge may dismiss the proceedings and discharge a [~~the~~] defendant, other than a defendant charged with an offense described by Section 13B(b) of this article, prior to the expiration of the term of community supervision if in the judge's opinion the best interest of society and the defendant will be served. The judge may dismiss the proceedings and discharge a defendant charged with a felony described by Section 13B(b) of this article only if in the judge's opinion the best interest of society and the defendant will be served and the defendant has successfully completed at least two-thirds of the period of community supervision. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received community supervision with a deferred adjudication of guilt shall be admissible before the court or jury to be considered on the issue of penalty;

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received community supervision with a deferred adjudication of guilt under this section in issuing, renewing, denying, or revoking a license under that chapter; and

(3) if the defendant is a person who has applied for registration to provide mental health or medical services for the rehabilitation of sex offenders, the Interagency Council on Sex Offender Treatment may consider the fact that the defendant has received probation under this

section in issuing, renewing, denying, or revoking a license or registration issued by that council.

SECTION 3. Article 42.12, Code of Criminal Procedure, is amended by adding Section 13B to read as follows:

Sec. 13B. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR SEXUAL OFFENSES AGAINST CHILDREN. (a) If a judge grants community supervision to a defendant described by Subsection (b) and the judge determines that a child as defined by Section 22.011(c), Penal Code, was the victim of the offense, the judge shall establish a child safety zone applicable to the defendant by requiring as a condition of community supervision that the defendant:

(1) not:

(A) supervise or participate in any program that includes as participants or recipients persons who are 17 years of age or younger and that regularly provides athletic, civic, or cultural activities; or

(B) go in, on, or within a distance specified by the judge of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility; and

(2) attend psychological counseling sessions for sex offenders with a sex offender treatment provider specified by or approved by the judge or the community supervision and corrections department officer supervising the defendant.

(b) This section applies to a defendant placed on community supervision for an offense:

(1) under Section 43.25 or 43.26, Penal Code;

(2) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(3) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(4) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony listed in Subdivision (2) or (3) of this subsection.

(c) A community supervision and corrections department officer who under Subsection (a)(2) specifies a sex offender treatment provider to provide counseling to a defendant shall contact the provider before the defendant is released, establish the date, time, and place of the first session between the defendant and the provider, and request the provider to immediately notify the officer if the defendant fails to attend the first session or any subsequent scheduled session.

(d) Notwithstanding Subsection (a)(1), a judge is not required to impose the conditions described by Subsection (a)(1) if the defendant is a student at a primary or secondary school.

(e) At any time after the imposition of a condition under Subsection (a)(1), the defendant may request the court to modify the child safety zone applicable to the defendant because the zone as created by the

court interferes with the ability of the defendant to attend school or hold a job and consequently constitutes an undue hardship for the defendant.

(f) A community supervision and corrections department officer supervising a defendant described by Subsection (b) may permit the defendant to enter on an event-by-event basis into the child safety zone from which the defendant is otherwise prohibited from entering if:

(1) the defendant has served at least two years of the period of community supervision;

(2) the defendant enters the zone as part of a program to reunite with the defendant's family;

(3) the defendant presents to the officer a written proposal specifying where the defendant intends to go within the zone, why and with whom the defendant is going, and how the defendant intends to cope with any stressful situations that occur;

(4) the sex offender treatment provider treating the defendant agrees with the officer that the defendant should be allowed to attend the event; and

(5) the officer and the treatment provider agree on a chaperon to accompany the defendant and the chaperon agrees to perform that duty.

(g) Section 10(a) does not prohibit a community supervision and corrections department officer from altering a condition of community supervision by permitting a defendant to enter a child safety zone under Subsection (f).

(h) In this section, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

SECTION 4. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (u) to read as follows:

(u)(1) A parole panel shall establish a child safety zone applicable to an inmate described by Subdivision (2) if the panel determines that a child as defined by Section 22.011(c), Penal Code, was the victim of the offense by requiring as a condition of parole or release to mandatory supervision that the inmate:

(A) not:

(i) supervise or participate in any program that includes as participants or recipients persons who are 17 years of age or younger and that regularly provides athletic, civic, or cultural activities; or

(ii) go in, on, or within a distance specified by the panel of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility; and

(B) attend psychological counseling sessions for sex offenders with a sex offender treatment provider specified by the parole officer supervising the parolee after release.

(2) This section applies to an inmate serving a sentence for an offense:

(A) under Section 43.25 or 43.26, Penal Code;

(B) under Section 21.11, 22.011, 22.021, or 25.02, Penal Code;

(C) under Section 20.04(a)(4), Penal Code, if the inmate committed the offense with the intent to violate or abuse the victim sexually; or

(D) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the inmate committed the offense with the intent to commit a felony listed in Paragraph (B) or (C) of this subdivision.

(3) A parole officer who under Subdivision (1)(B) specifies a sex offender treatment provider to provide counseling to an inmate shall contact the provider before the inmate is released, establish the date, time, and place of the first session between the inmate and the provider, and request the provider to immediately notify the officer if the inmate fails to attend the first session or any subsequent scheduled session.

(4) At any time after the imposition of a condition under Subdivision (1)(A), the inmate may request the parole panel to modify the child safety zone applicable to the inmate because the zone as created by the panel interferes with the ability of the inmate to attend school or hold a job and consequently constitutes an undue hardship for the inmate.

(5) A parole officer supervising an inmate described by Subdivision (2) may permit the inmate to enter on an event-by-event basis into the child safety zone from which the inmate is otherwise prohibited from entering if:

(A) the inmate has served at least two years of the period of supervision imposed on release;

(B) the inmate enters the zone as part of a program to reunite with the inmate's family;

(C) the inmate presents to the parole officer a written proposal specifying where the inmate intends to go within the zone, why and with whom the inmate is going, and how the inmate intends to cope with any stressful situations that occur;

(D) the sex offender treatment provider treating the inmate agrees with the officer that the inmate should be allowed to attend the event; and

(E) the officer and the treatment provider agree on a chaperon to accompany the inmate, and the chaperon agrees to perform that duty.

(6) In this subsection, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

SECTION 5. Chapter 493, Government Code, is amended by adding Section 493.017 to read as follows:

Sec. 493.017. REPORTS ON SEX OFFENDER TREATMENT. (a) A sex offender correction program that provides counseling sessions for a sex offender under Section 13B, Article 42.12, Code of Criminal Procedure, shall report to the community supervision and corrections department

officer supervising the offender, not later than the 15th day of each month, the following information about the offender:

(1) the total number of counseling sessions attended by the sex offender during the preceding month; and

(2) if during the preceding month the sex offender terminates participation in the program before completing counseling, the reason for the sex offender's termination of counseling.

(b) A sex offender correction program that provides counseling sessions for a sex offender under Section 8(u), Article 42.18, Code of Criminal Procedure, shall report to the parole officer supervising the offender, not later than the 15th day of each month, the following information about the offender:

(1) the total number of counseling sessions attended by the sex offender during the preceding month; and

(2) if during the preceding month the sex offender terminates participation in the program before completing counseling, the reason for the sex offender's termination of counseling.

SECTION 6. A sex offender correction program shall make the first monthly report required by Section 493.017, Government Code, as added by this Act, not later than October 15, 1995.

SECTION 7. (a) The change in law made by this Act applies only to a defendant charged with an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) A defendant charged with or convicted of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **C.S.S.B. 111** as follows:

(1) In SECTION 3 of the bill, in Section 13B, Article 42.12, Code of Criminal Procedure (House committee report, page 5, lines 20-25), strike proposed Subsection (e) and substitute a new Subsection (e) to read as follows:

(e) At any time after the imposition of a condition under Subsection (a)(1), the defendant may request the court to modify the child safety zone applicable to the defendant because the zone as created by the court:

(1) interferes with the ability of the defendant to attend school or hold a job and consequently constitutes an undue hardship for the defendant; or

(2) is broader than is necessary to protect the public, given the nature and circumstances of the offense.

(2) In SECTION 4 of the bill, in Section 8(u), Article 42.18, Code of Criminal Procedure (House committee report, page 8, lines 10-15), strike proposed Subdivision (4) and substitute the following:

(4) At any time after the imposition of a condition under Subdivision (1)(A), the inmate may request the parole panel to modify the child safety zone applicable to the inmate because the zone as created by the panel:

(A) interferes with the ability of the inmate to attend school or hold a job and consequently constitutes an undue hardship for the inmate; or

(B) is broader than necessary to protect the public, given the nature and circumstances of the offense.

Floor Amendment No. 2

Amend **C.S.S.B. 111** in SECTION 2 of the bill, in Section 5, Article 42.12, (House committee report, page 1, line 18 - page 2, line 20), by striking proposed Subsection (a) and substituting a new Subsection (a) to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. The judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

Floor Amendment No. 1 on Third Reading

Amend **C.S.S.B. 111** on third reading as follows:

1) In SECTION 3 of the bill, in the proposed Section 13B(a)(2), Article 42.12, Code of Criminal Procedure, strike "a sex offender treatment provider" and replace with "an individual or organization which provides sex offender treatment or counseling as".

2) In SECTION 4 of the bill, in the proposed Section 8(u)(1)(B), Article 42.18, Code of Criminal Procedure, strike "a sex offender treatment provider" and replace with "an individual or organization which provides sex offender treatment or counseling as".

The amendments were read.

On motion of Senator Shapiro and by unanimous consent, the Senate concurred in the House amendments to **S.B. 111** by a viva voce vote.

SENATE BILL 369 WITH HOUSE AMENDMENT

Senator Moncrief called **S.B. 369** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 369** by inserting the following appropriately numbered section of the bill and renumbering subsequent sections of the bill accordingly:

SECTION ___. Section 443.018, Government Code, is amended to read as follows:

Sec. 443.018. REGULATION OF VISITORS AND VENDORS. (a) The board shall adopt rules that regulate the actions of visitors in the Capitol or on the grounds of the Capitol.

(b) The rules adopted under Subsection (a) shall include rules that:

(1) prohibit persons from attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) prohibit a visitor from placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) prohibit the setting up or placement of camping equipment, shelter, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board;

(4) prohibit actions that block ingress and egress:

(A) into the Capitol building; or

(B) rooms or hallways within the Capitol building, except as approved by the board;

(5) prohibit actions that pose a risk to safety;

(6) provide that members of the public must leave the Capitol when the building is closed to the public; [~~and~~]

(7) provide that all pets except Seeing Eye dogs are not permitted in the Capitol, and shall be restrained at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board;

(8) prohibit the use of skateboards, rollerblades, and rollerskates in the Capitol or on the grounds of the Capitol; and

(9) prohibit a vendor or commercial enterprise from operating in the Capitol or on the grounds of the Capitol unless the vendor or commercial enterprise is authorized to do so by the board.

(c) [~~(b)~~] A person commits an offense if the person violates a rule of the board adopted under Subsection (a).

(d) [~~(c)~~] An offense under this section is a Class C misdemeanor.

(e) [~~(d)~~] This section may not be applied in a manner that violates a person's rights under the Texas Constitution or the First Amendment to the United States Constitution, including the right of persons peaceably to assemble.

(f) [~~(e)~~] The board shall send proposed rules under this section to the attorney general for review and comment before the board adopts the rules.

The amendment was read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendment to **S.B. 369** by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Zaffirini and by unanimous consent, the vote by which the Conference Committee Report on **H.B. 1863** was adopted was reconsidered.

Question—Shall the Conference Committee Report on **H.B. 1863** be adopted?

On motion of Senator Zaffirini, the Conference Committee Report on **H.B. 1863** was adopted by the following vote: Yeas 30, Nays 1.

Nays: Truan.

SENATE BILL 390 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 390** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 390** as follows:

1) Amend SECTION 1 as follows:

1. page 1, line 7, between "entity" and "with" delete "or corporation".

2. page 1, line 11, between "entity" and "relating" delete "or corporation".

3. page 1, line 14, between "entity" and "any" delete "or corporation".

4. page 1, lines 20 and 21, between "entity" and "may" delete "or corporation".

5. page 1, line 23 and page 2, line 1, between "entity" and "does" delete "or corporation".

2) Amend SECTION 2 as follows:

1. page 2, line 3, between "entity" and "with" delete "or corporation".

2. page 2, lines 5 and 6, between "entity" and "that" delete "or corporation".

The amendment was read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendment to **S.B. 390** by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the motion to concur in the House amendment to **S.B. 390**.

SENATE BILL 452 WITH HOUSE AMENDMENT

Senator Rosson called **S.B. 452** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 452** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to powers and duties of the Texas Ethics Commission, to powers and duties of persons acting under certain laws administered by the commission, and to the registration of persons who represent inmates for compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 305.005(f), (g), and (k), Government Code, are amended to read as follows:

(f) The registration must be written and verified and must contain:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name and address of each person:

(A) who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action;

(4) the subject matter and, if applicable, the [~~bill number,~~] docket number[;] or other [~~legislative or~~] administrative designation of the [~~legislation or~~] administrative action that is the subject of the registrant's direct communication with a member of the [~~legislative or~~] executive branch;

(5) for each person employed or retained by the registrant for the purpose of assisting in direct communication with a member of the legislative or executive branch to influence legislation or administrative action:

(A) the full name, business address, and occupation[~~, and date of employment or retention~~] of the person [~~by the registrant~~]; and

(B) the subject matter and, if applicable, the [~~bill number,~~] docket number[;] or other administrative designation of the [~~legislation or~~] administrative action to which the person's activities reportable under this section were related; and

(6) the amount of compensation or reimbursement paid by each person who reimburses, retains, or employs the registrant for the purpose of communicating directly with a member of the legislative or executive branch or on whose behalf the registrant communicates directly with a member of the legislative or executive branch.

(g) Compensation or reimbursement required to be reported under Subsection (f)(6) shall be reported in the following categories unless reported as an exact amount:

(1) $0 if no compensation or reimbursement is received;

(2) less than $10,000;

(3) [~~(2)~~] at least $10,000 but less than $25,000;

(4) [~~(3)~~] at least $25,000 but less than $50,000;

(5) [~~(4)~~] at least $50,000 but less than $100,000;

(6) [~~(5)~~] at least $100,000 but less than $150,000;

(7) [~~(6)~~] at least $150,000 but less than $200,000; and

(8) [~~(7)~~] $200,000 or more.

(k) If there is a change in the information required to be reported by a registrant under this section, other than Subsection (h) or (i), and that changed information is not timely reported on a report due under Section 305.007, the registrant shall file an amended statement reflecting the change with the commission not later than the date on which the next report is due under Section 305.007.

SECTION 2. Sections 305.006(b) and (d), Government Code, are amended to read as follows:

(b) The report must contain the total expenditures under a category listed in this subsection that the registrant made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action and that are directly attributable, as that term is used in Section 305.0062(b), to a member of the legislative or executive branch or the immediate family of a member of the legislative

or executive branch. The report must also include expenditures for the direct communications under a category listed in this subsection that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant. The expenditures must be reported in the following categories:

(1) transportation and lodging;

(2) food and beverages;

(3) entertainment;

(4) gifts, other than awards and mementos;

(5) awards and mementos; and

(6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events.

(d) The report must also contain a list of the specific categories of subject matters about which the registrant, any person the registrant retains or employs to appear on the registrant's behalf, or any other person appearing on the registrant's behalf communicated directly with a member of the legislative or executive branch and that has not been reported under Section 305.005. The list must include the number or other designation assigned to the [~~legislation or~~] administrative action, if known.

SECTION 3. Sections 305.0062(a) and (d), Government Code, are amended to read as follows:

(a) The report filed under Section 305.006 must also contain the total expenditures described by Section 305.006(b) that are directly attributable to members of the legislative or executive branch [~~and those that are directly attributable to the registrant~~]. The expenditures must be stated in only one of the following categories:

(1) state senators;

(2) state representatives;

(3) elected or appointed state officers, other than those described by Subdivision (1) or (2);

(4) legislative agency employees;

(5) executive agency employees;

(6) the immediate family of a member of the legislative or executive branch;

[~~(7) the registrant;~~] and

(7) [~~(8)~~] events to which all legislators are invited.

(d) If a registrant cannot reasonably determine the amount of an expenditure under Section 305.006(b) that is directly attributable to a member of the legislative or executive branch [~~or to the registrant~~] as required by Subsection (a), the registrant shall apportion the expenditure made by that registrant or by others on the registrant's behalf and with the registrant's consent or ratification according to the total number of persons in attendance. However, if an expenditure is for an event to which all legislators are invited, the registrant shall report the expenditure under Subsection (a)(7) [~~(a)(8)~~] and not under any other subdivision of that subsection or any other provision of this chapter.

SECTION 4. Section 305.025, Government Code, is amended to read as follows:

Sec. 305.025. EXCEPTIONS. Section 305.024 does not prohibit:

(1) a loan in the due course of business from a corporation or other business entity that is legally engaged in the business of lending money and that has conducted that business continuously for more than one year before the loan is made;

(2) a loan or guarantee of a loan or a gift made or given by a person related within the second degree by affinity or consanguinity to the member of the legislative or executive branch;

(3) necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips, but not including attendance at merely ceremonial events or pleasure trips;

(4) necessary expenditures for transportation and lodging provided in connection with a conference, seminar, educational program, or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; [~~or~~]

(5) an incidental expenditure for transportation as determined by commission rule; or

(6) a political contribution as defined by Section 251.001, Election Code.

SECTION 5. Section 305.031(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than Section 305.0011 or 305.022. An offense under this subsection is a Class A misdemeanor.

SECTION 6. Subchapter C, Chapter 571, Government Code, is amended by adding Section 571.077 to read as follows:

Sec. 571.077. STATEMENTS, REGISTRATIONS, AND REPORTS CONSIDERED TO BE VERIFIED. (a) A statement, registration, or report that is filed with the commission is considered to be under oath by the person required to file the statement, registration, or report regardless of the absence of or defect in the affidavit of verification, including a signature.

(b) A person required to file a statement, registration, or report with the commission is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or defect in the affidavit of verification.

(c) This section applies to a statement, registration, or report that is filed with the commission electronically or otherwise.

SECTION 7. Sections 253.032(a) and (e), Election Code, are amended to read as follows:

(a) In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than $500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed $500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee:

(1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who

contributed more than $100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee [~~the commission~~].

(e) A candidate, officeholder, or political committee that accepts political contributions totaling $500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted:

(1) the same information for the out-of-state political committee required for general-purpose committees by Sections 252.002 and 252.003; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee [~~the commission~~].

SECTION 8. Subchapter B, Chapter 253, Election Code, is amended by adding Section 253.0351 to read as follows:

Sec. 253.0351. LOANS FROM PERSONAL FUNDS. (a) A candidate or officeholder who makes political expenditures from his personal funds may report the amount expended as a loan and may reimburse his personal funds from political contributions in the amount of the reported loan.

(b) Section 253.035(h) applies if the person does not report an amount as a loan as authorized by Subsection (a).

SECTION 9. Section 253.035(h), Election Code, is amended to read as follows:

(h) Except as provided by Section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from his personal funds may reimburse his personal funds from political contributions in the amount of those expenditures only if:

(1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and

(2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

SECTION 10. Sections 11(b), (g), and (h), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(b) A person who represents an inmate for compensation:

(1) must be an attorney licensed in this state; and

(2) must register with the pardons and paroles division [~~Texas Ethics Commission~~].

(g) A person required to register under this section shall, for each calendar year the person represents an inmate, file a representation summary form with the pardons and paroles division [~~Texas Ethics Commission~~] on a form prescribed by the division [~~commission~~]. The

form must be filed not later than the last day of January in the first year following the reporting period and include:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name of any former member or employee of the Board of Pardons and Paroles or the Texas Board of Criminal Justice or any former employee of the Texas Department of Criminal Justice with whom the person:

(A) is associated;

(B) has a relationship as an employer or employee; or

(C) maintains a contractual relationship to provide services;

(4) the full name and institutional identification number of each inmate the registrant represented in the previous calendar year; and

(5) the amount of compensation the person has received for representing each inmate in the previous calendar year.

(h) A person who registers under Subsection (g) of this section and for whom the information required for registration has changed shall, not later than the 10th day after the date the information changes, file a supplemental statement with the pardons and paroles division [~~Texas Ethics Commission~~] indicating the change.

SECTION 11. The following are repealed:

(1) Section 253.040, Election Code; and

(2) Sections 11(i) and (l), Article 42.18, Code of Criminal Procedure.

SECTION 12. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995, and applies to a statement, registration, or report required to be filed with the Texas Ethics Commission on or after that date.

(b) Section 10 and Subdivision (2), Section 11, of this Act take effect January 1, 1996.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Rosson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 452** by a viva voce vote.

SENATE BILL 480 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 480** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 480** by adding a new sentence following the word jurisdiction. on line 3 of page 3 of the bill:
Except as provided herein, nothing in this article shall be construed to reduce, limit, or impair any power heretofore vested by law in a county, as related to county roads.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **S.B. 480**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 496 WITH HOUSE AMENDMENT

Senator Madla called **S.B. 496** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 496** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the contribution of vacation leave time by certain county employees to a county sick leave pool.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 157.072, Local Government Code, is amended to read as follows:

Sec. 157.072. AUTHORITY TO ESTABLISH PROGRAM FOR SICK LEAVE POOL. (a) The commissioners court of a county may establish a program within the county to allow an employee to voluntarily transfer sick leave time earned by the employee to a county sick leave pool.

(b) The commissioners court of a county with a population of one million or more may allow an employee to voluntarily transfer vacation leave time earned by the employee to a county sick leave pool.

SECTION 2. Section 157.074(b), Local Government Code, is amended to read as follows:

(b) On approval by the administrator, in a fiscal year the employee may transfer to the county sick leave pool not less than one day or more than three days of accrued sick leave time, or accrued vacation leave time in a county operating under Section 157.072(b), earned by the employee. The administrator shall credit the pool with the amount of time contributed by the employee and shall deduct the same amount of time from the amount to which the employee is entitled, as if the employee had used the time for personal purposes.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Madla and by unanimous consent, the Senate concurred in the House amendment to **S.B. 496** by a viva voce vote.

SENATE BILL 527 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 527** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 527** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to conditions of employment for certain officers of the state or a political subdivision of the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 140.004, Local Government Code, is amended to read as follows:

Sec. 140.004. BUDGETS OF CERTAIN JUVENILE BOARDS AND COMMUNITY SUPERVISION AND CORRECTIONS [~~PROBATION~~] DEPARTMENTS. (a) This section applies only to:

(1) a juvenile board, juvenile probation office, or juvenile department established for one or more counties; and

(2) a community supervision and corrections [~~an adult probation office or~~] department established for a judicial district.

(b) Before the 45th day before the first day of the fiscal year of a county, a juvenile board and a community supervision and corrections [~~probation~~] department that each have jurisdiction in the county shall:

(1) prepare a budget for the board's or department's next fiscal year; and

(2) hold a meeting to finalize the budget.

(c) Before the 14th day before the juvenile board or community supervision and corrections [~~probation~~] department has a meeting to finalize its budget, the board or department shall file with the commissioners court:

(1) a copy of the proposed budget; and

(2) a statement containing the date of the board's or department's meeting to finalize its budget.

(d) Before the later of the 90th day after the last day of the juvenile board's or community supervision and corrections [~~probation~~] department's fiscal year, or the date the county auditor's annual report is made to the commissioners court, the board or department shall file with the commissioners court a complete financial statement of the board or department covering the board's or department's preceding fiscal year.

(e) The financial statement required by Subsection (d) must contain any information considered appropriate by the juvenile board or community supervision and corrections [~~probation~~] department and any information required by the commissioners court of each county in which the board or department has jurisdiction.

(f) The budget for a juvenile board or community supervision and corrections department may not include an automobile allowance for a member of the governing body of the board or department if the member holds another state, county, or municipal office. The budget may include reimbursement of actual travel expenses, including mileage for automobile travel, incurred while the member is engaged in the official business of the board or department.

SECTION 2. Section 157.021, Local Government Code, is amended to read as follows:

Sec. 157.021. HOURS OF WORK OF COUNTY EMPLOYEES [~~in Counties of 355,000 or More~~]. (a) In a county with a population of 355,000 or more, the commissioners court may adopt and enforce uniform rules on the hours of work of department heads, assistants, deputies, and other employees whose compensation is set or approved by the court.

(b) The commissioners court of any county may adopt and enforce uniform rules on overtime and compensatory time for department heads, assistants, deputies, and other employees whose compensation is set or approved by the commissioners court. The rules may:

(1) prohibit unbudgeted overtime, except when the commissioners court or an elected county or district officer declares an emergency; and

(2) require that emergency overtime be reported to the county auditor and the commissioners court.

SECTION 3. Section 391.011, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) A commission may not expend funds for an automobile allowance for a member of the governing body of the commission if the member holds another state, county, or municipal office. Funds may be expended for reimbursement of actual travel expenses, including mileage for automobile travel, incurred while the member is engaged in the official business of the commission.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendment to **S.B. 527** by a viva voce vote.

SENATE BILL 553 WITH HOUSE AMENDMENT

Senator Nelson called **S.B. 553** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 553** by amending Article 5.03-3, Insurance Code, as added by the bill (Senate engrossment printing page 3, between lines 11 and 12), by inserting a new Section 4 of that article to read as follows:

Sec. 4. CONTINUATION OF DISCOUNT. Notwithstanding Section 2(b)(3) of this article, an insurer may continue to grant a discount under this article to a person who has graduated from an academic course of study at an institution of higher education if the person:

(1) attended an institution of higher education as a full-time student for at least two consecutive years and was an honor student for at least the last two years of the person's course of study; and

(2) is under 25 years of age.

The amendment was read.

On motion of Senator Nelson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 553** by a viva voce vote.

(Senator Ratliff in Chair)

SENATE BILL 595 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 595** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 595** as follows:

(1) In Section 3 of the bill in Section 343.0111 Health and Safety Code (House committee report page 3, line 6) after the semicolon add "or".

(2) In Section 3 of the bill in Section 343.0111 Health and Safety Code (House committee report page 3, line 9) after the semicolon add "or".

The amendment was read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendment to **S.B. 595** by a viva voce vote.

SENATE BILL 607 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.B. 607** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 607** by amending Subsection (b), Article 21.53C, Insurance Code, as added by Section 1 of the bill, to read as follows:

(b) "Qualified individual" means:

(1) a post-menopausal woman who is not receiving estrogen replacement therapy;

(2) an individual with:

(A) vertebral abnormalities;

(B) primary hyperparathyroidism; or

(C) a history of bone fractures; or

(3) an individual who is:

(A) receiving long-term giucocorticord therapy; or

(B) being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.B. 607** by a viva voce vote.

SENATE BILL 726 WITH HOUSE AMENDMENT

Senator Sibley called **S.B. 726** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 726** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to energy conservation measures by institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.927, Education Code, is amended by amending Subsection (g) and adding Subsections (j) and (k) to read as follows:

(g) A contract under this section may be let under competitive sealed proposal procedures. Notice of the request for proposals shall be given in the manner provided for in Sec. 3.12, Article 601b, Revised Statutes. The institution shall submit the proposals to the energy management center for review and comment before awarding the contract. The energy management center may provide cost-benefit analysis of the proposals and analysis of the guaranteed savings projected by offerors and may charge a fee for this service [~~The notice of the request for proposals shall be provided to the office of the governor for review and comment at least~~

~~30 days prior to any contract award~~]. The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined by the institution to be the most advantageous to the institution considering the guaranteed savings and other evaluation factors set forth in the request for proposals, except that if the institution finds that no offer is acceptable, it shall refuse all offers.

(j) The legislature shall base an institution's appropriation for energy costs during a fiscal year on the sum of:

(1) the institution's estimated energy costs for that fiscal year; and

(2) if a contract under this section is in effect, the institution's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

(k) The Texas Higher Education Coordinating Board, in consultation with the energy management center, shall establish guidelines and an approval process for energy conservation measures.

SECTION 2. (a) This Act takes effect September 1, 1995.

(b) This Act does not apply to an appropriation enacted before the effective date of this Act, without regard to the period for which the appropriation is made.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Sibley and by unanimous consent, the Senate concurred in the House amendment to **S.B. 726** by a viva voce vote.

SENATE BILL 421 WITH HOUSE AMENDMENTS

Senator Wentworth called **S.B. 421** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 421** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the transfer of extraterritorial jurisdiction between certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 42, Local Government Code, is amended by adding Section 42.024 to read as follows:

Sec. 42.024. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Adopting municipality" means a home-rule municipality with a population of less than 25,000 that purchases and appropriates raw water for its water utility through a transbasin diversion permit from one or two river authorities in which the municipality has territory.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 450,000 that owns an electric utility.

(b) The governing body of an adopting municipality may by resolution include in its extraterritorial jurisdiction an area that is in the extraterritorial jurisdiction of a releasing municipality if:

(1) the releasing municipality does not provide water, sewer services, and electricity to the released area;

(2) the owners of a majority of the land within the released area request that the adopting municipality include in its extraterritorial jurisdiction the released area;

(3) the released area is:

(A) adjacent to the territory of the adopting municipality;

(B) wholly within a county in which both municipalities have territory; and

(C) located in the county in which the adopting municipality is located and either (i) north of the south bank of a branch of a creek in which the adopting municipality discharges wastewater pursuant to a permit issued by the Texas Natural Resource Conservation Commission or its predecessor agency prior to the effective date of this section and west of the confluence of such branch of that creek with a northern branch of that creek, or (ii) abutting that creek and described in an amendment to a water sale contract between the adopting municipality and a river authority, if by September 1, 1996, the releasing municipality does not enter into a contract with the owners of such abutting tract to supply water and wastewater service to such abutting tract;

(4) the adopting municipality adopts ordinances or regulations within the released area for water quality standards relating to the control or abatement of water pollution that are in conformity with those of the Texas Natural Resource Conservation Commission applicable to the released area on January 1, 1995; and

(5) the adopting municipality has adopted a service plan to provide water and sewer service to the area acceptable to the owners of a majority of the land within the released area.

(c)(1) The service plan under Subsection (b)(5) shall include an assessment of the availability and feasibility of participation in any regional facility permitted by the Texas Natural Resource Conservation Commission in which the releasing municipality is a participant and had plans to provide service to the released area. The plan for regional service shall include:

(A) proposed dates for providing sewer service through the regional facility;

(B) terms of financial participation to provide sewer service to the released area, including rates proposed for service sufficient to reimburse the regional participants over a reasonable time for any

expenditures associated with that portion of the regional facility designed or constructed to serve the released area as of January 1, 1993; and

(C) participation by the adopting municipality in governance of the regional facility based on the percentage of land to be served by the regional facility in the released area compared to the total land area to be served by the regional facility.

(2) The adopting municipality shall deliver a copy of the service plan to the releasing municipality and any other participant in any regional facility described in this subsection at least 30 days before the resolution to assume extraterritorial jurisdiction. The releasing municipality and any other participant in any regional facility described in this subsection by resolution shall, within 30 days of delivery of the service plan, either accept that portion of the service plan related to participation by the adopting municipality in the regional facility or propose alternative terms of participation.

(3) If the adopting municipality, the releasing municipality, and any other participant in any regional facility described in this subsection fail to reach agreement on the service plan within 60 days after the service plan is delivered, any municipality that is a participant in the regional facility or any owner of land within the area to be released may appeal the matter to the Texas Natural Resource Conservation Commission. The Texas Natural Resource Conservation Commission shall, in its resolution of any differences between proposals submitted for review in this subsection, use a cost-of-service allocation methodology which treats each service unit in the regional facility equally, with any variance in rates to be based only on differences in costs based on the time service is provided to an area served by the regional facility. The Texas Natural Resource Conservation Commission may allow the adopting municipality, the releasing municipality, or any other participant in any regional facility described in this subsection to withdraw from participation in the regional facility on a showing of undue financial hardship.

(4) A decision by the Texas Natural Resource Conservation Commission under this subsection is not subject to judicial review, and any costs associated with the commission's review shall be assessed to the parties to the decision in proportion to the percentage of land served by the regional facility subject to review in the jurisdiction of each party.

(5) The releasing municipality shall not, prior to January 1, 1997, discontinue or terminate any interlocal agreement, contract, or commitment relating to water or sewer service that it has as of January 1, 1995, with the adopting municipality without the consent of the adopting municipality.

(d) On the date the adopting municipality delivers a copy of the resolution under Subsection (b) to the municipal clerk of the releasing municipality, the released area shall be included in the extraterritorial jurisdiction of the adopting municipality and excluded from the extraterritorial jurisdiction of the releasing municipality.

(e) If all or part of a tract of land under the control of the same ownership has been or becomes split between the extraterritorial jurisdiction of a municipality subject to this section and the jurisdiction of another municipality or is land described in Subsection (b)(3)(C), then

the authority granted under Chapter 212 resides with the municipality selected by the owner of the property through petition to that municipality.

(f) Nothing in this section requires the releasing municipality to continue to participate in a regional wastewater treatment plant providing service, or to provide new services, to any territory within the released area.

(g) This section controls over any conflicting provision of this subchapter.

SECTION 2. If any provision, section, sentence, clause, or phrase of this Act, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or for any reason unenforceable, the validity of the remaining portions of this Act or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the legislature in adopting this Act that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **C.S.S.B. 421** as follows:

(1) In SECTION 1 of the bill, in proposed Section 42.024(a)(2), Local Government Code (committee printing, page 1, line 16) after "utility" and before the period, insert the following:

", that has a charter provision allowing for limited-purpose annexation, and that has annexed territory for a limited purpose".

(2) In SECTION 1 of the bill, strike proposed Section 42.024(b)(3)(C), Local Government Code (committee printing, page 2, lines 7-18), and substitute the following:

"(C) located within one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality.".

(3) In SECTION 1 of the bill, in proposed Section 42.024(B)(4), Local Government Code (committee printing, page 2, line 23), strike "and".

(4) In SECTION 1 of the bill, in proposed Section 42.024(b)(5), Local Government Code (committee printing, page 2, line 26), insert the following after "area" and before the period:

; and

(6) the size of the released area does not exceed the difference between the total area within the extraterritorial jurisdiction of the adopting municipality, exclusive of the extraterritorial jurisdiction of the releasing municipality, on the date the resolution was adopted under this subsection,

as determined by Section 42.021, and the total area within the adopting municipality's extraterritorial jurisdiction on the date of the resolution.

(5) In SECTION 1 of the bill, strike proposed Section 42.024(e), Local Government Code (committee printing page 5, lines 10-16), and substitute the following:

(e) If any part of a tract of land, owned either in fee simple or under common control or undivided ownership, was or becomes split, before or after the dedication or deed of a portion of the land for a public purpose, between the extraterritorial jurisdiction of a releasing municipality and the extraterritorial jurisdiction of another municipality, or is land described in Subsection (b)(3)(C), the authority to act under Chapter 212 and the authority to regulate development and building with respect to the tract of land is, on the request of the owner to the municipality, with the municipality selected by the owner of the tract of land. The municipality selected under this subsection may also provide or authorize another person or entity to provide municipal services to land subject to this subsection.

The amendments were read.

Senator Wentworth moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 421** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Barrientos, Patterson, Turner, and Cain.

SENATE BILL 886 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 886** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 886** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain procedures for the handling of a case in a justice or municipal court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 45.40, Code of Criminal Procedure, is amended to read as follows:

Art. 45.40. MISTRIAL. A jury shall be discharged if it fails to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than 30 [~~two~~] days and again impanel a jury to try such cause.

SECTION 2. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.007 to read as follows:

Sec. 30.007. MISTRIAL IN JUSTICE COURT OR MUNICIPAL COURT. If a jury in a trial in a justice court or a municipal court is discharged without having rendered a verdict, the cause may be tried again as soon as practicable.

SECTION 3. This Act takes effect September 1, 1995, and applies to a trial in a justice court or municipal court that begins on or after that date. For purposes of this section, a trial begins on the date a jury is impaneled. A trial that begins in a justice court or municipal court before the effective date of this Act is governed by the law in effect when the trial began, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Wentworth and by unanimous consent, the Senate concurred in the House amendment to **S.B. 886** by a viva voce vote.

SENATE BILL 896 WITH HOUSE AMENDMENT

Senator Nelson called **S.B. 896** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend line 16 of **S.B. 896** by: change "12 hours" to "24 hours"

The amendment was read.

On motion of Senator Nelson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 896** by a viva voce vote.

SENATE BILL 1058 WITH HOUSE AMENDMENT

Senator West called **S.B. 1058** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 1058** in SECTION 1 by adding a new Subsection (h) to read as follows:

(h) This section does not apply to services defined as engineering by the Board of Registration for Professional Engineers under Article 3271a, Vernon's Texas Civil Statutes, the Texas Engineering Practice Act.

The amendment was read.

On motion of Senator West and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1058** by a viva voce vote.

SENATE BILL 1135 WITH HOUSE AMENDMENT

Senator Madla called **S.B. 1135** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **S.B. 1135** on third reading on page 7, line 23, by striking the word "and" and substituting the word "or".

The amendment was read.

On motion of Senator Madla and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1135** by a viva voce vote.

(President in Chair)

SENATE BILL 783 WITH HOUSE AMENDMENT

Senator Ratliff called **S.B. 783** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 783** as follows:

(1) On line 8, between "leasing" and "property", insert "tangible personal"

(2) Insert new subsection (b) to read as follows:

(b) A person leasing real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the appraisal review board a determination of the appraised value of the property if the property owner does not file a protest relating to the property. The protest provided by this subsection is limited to a single protest by either the property owner or the lessee.

(3) Renumber following subsections appropriately.

The amendment was read.

Senator Ratliff moved to concur in the House amendment to **S.B. 783**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 752 WITH HOUSE AMENDMENT

Senator Patterson called **S.B. 752** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 752** as follows:

(1) Strike SECTION 3 of the bill (House committee printing, page 2, line 4, through page 3, line 23), and substitute the following:

SECTION 3. Section 3, Article 350, Revised Statutes, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) A retailer, wholesaler, or service provider who, in the ordinary course of business, accepts currency of a country or government other than the United States in payment for goods sold or services provided is eligible for an exemption from licensing under this article. A person requesting an exemption under this subsection must notify [~~annually file an application with~~] the commissioner in writing that the person qualifies for and intends to take advantage of the exemption and must certify that the person's currency exchange activities will be consistent with continued eligibility[~~, accompanied by a nonrefundable license exemption application fee in an amount to be set by the commissioner to recover the cost of administering this subsection. The commissioner shall grant an exemption to a person under this subsection if the commissioner determines that the person making the request is eligible under this subsection~~]. The commissioner in accordance with the examination provisions of this article may examine a person to verify the exempt status. The retailer, wholesaler, or service provider is not eligible for an exemption [~~may not be exempted under this subsection or an exemption may be suspended or revoked~~] if:

(1) the value of the goods or services purchased in a single transaction exceeds $10,000;

(2) the change given or made as a result of the transaction exceeds $100;

(3) an attempt is made to structure transactions in a way to evade the licensing requirements of this article or to avoid using a licensed currency exchange business;

(4) the retailer, wholesaler, or service provider is engaged in the business of cashing checks, drafts, or other monetary instruments for a fee or other consideration and is not otherwise exempted from licensing under this article; or

(5) the retailer, wholesaler, or service provider would not be eligible for a license under Section 8 of this article.

(f) A person engaged in the business of currency transportation who holds a permit issued under Section 6-dd, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), is not required to be licensed under this article, provided that

such a permit does not authorize the person to engage in the business of currency exchange or transmission without a license issued under this article.

(2) Strike SECTION 4 of the bill (House committee printing, page 3, line 24, through page 4, line 10), and substitute the following:

SECTION 4. Section 8, Article 350, Revised Statutes, is amended by amending Subsections (c) and (d) and adding Subsections (e) and (f) to read as follows:

(c) A person is not eligible for a license or must surrender an existing license if, during the previous 10 years:

(1) [;] the person or a principal of the person, if a business:

(A) [~~(1)~~] has been convicted of a felony or a crime involving moral turpitude under the laws of this state, any other state, or the United States;

(B) [~~(2)~~] has been convicted of a crime under the laws of another country that involves moral turpitude or would be a felony if committed in the United States; or

(C) has been convicted under a state or federal law relating to currency exchange or transmission or any state or federal monetary instrument reporting requirement; or

(2) the person, a principal of the person, or the spouse of the person or a principal of the person has been convicted of an offense under a state or federal law relating to drugs, drug trafficking, money laundering, or immigration or a reporting requirement of the Bank Secrecy Act (Pub. L. 91-508)

[~~(3) owes delinquent taxes to any local, state, or federal taxing entity~~].

(d) An applicant for a license or renewal of a license must demonstrate that the applicant:

(1) has not recklessly failed to file or evaded the obligation to file a currency transaction report as required by 31 U.S.C. Section 5313 during the previous three years;

(2) has not recklessly accepted currency for exchange or transmission during the previous three years in which a portion of the currency was derived from an illegal transaction or activity;

(3) will conduct its currency exchange or transmission business within the bounds of state and federal law; [~~and~~]

(4) warrants the trust of the community;

(5) has and will maintain a minimum net worth of $25,000, computed according to generally accepted accounting principles for each location at which currency is accepted for transmission, except that an applicant for a license or renewal of a license may not be required to maintain a net worth of more than $1 million, computed according to generally accepted accounting principles; and

(6) does not owe delinquent taxes, fines, or fees to any local, state, or federal taxing authority or governmental agency, department, or other political subdivision.

(e) A person is not eligible for a license, and a person who holds a license shall surrender the license to the commissioner, if the person or a principal of the person has at any time been convicted of:

(1) a felony under Chapter 34, Penal Code, or a similar provision of the laws of another state or the United States involving the laundering of money that is the product of or proceeds from criminal activity; or

(2) a felony violation of 31 U.S.C. Section 5313 or 5324 or a rule adopted under those sections.

(f) Before approving an application for a license, the Banking Department may investigate an applicant or principal of an applicant at the sole expense of the applicant and may require the applicant to pay a nonrefundable payment of the anticipated expenses for conducting the investigation. Failure to make the payment or cooperate with the investigation is grounds for denying the application.

(3) Strike SECTION 9 of the bill (House committee printing, page 8, line 14), and substitute the following:

SECTION 9. This Act takes effect September 1, 1995, except that a person is not required to meet the minimum net worth requirements of Section 8(d)(5), Article 350, Revised Statutes, as amended by this Act, until January 1, 1996.

(4) Add the following appropriately numbered sections to the bill and renumber the sections of the bill appropriately:

SECTION___. Section 1(10), Article 350, Revised Statutes, is amended to read as follows:

(10) "Principal" means an owner, officer, director, partner, trustee, agent, or other person participating in the conduct of the affairs of a licensee or exercising supervisory duties.

SECTION ___. Article 350, Revised Statutes, is amended by adding Section 22 to read as follows:

Sec. 22. DECEPTIVE NAME OR ADVERTISING. (a) A licensee who advertises the prices to be charged by the currency exchange or currency transmission business for services that are governed by this article must specifically state in the advertisement all fees or commissions to be charged to the consumer.

(b) The commissioner by rule may establish requirements for the size and type of lettering a licensee must use in an advertisement for prices or rates.

(c) A person who violates this section or a rule adopted under this section commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b), Section 17.46, Business & Commerce Code.

(d) A corporate licensee may not use the same name as, or a name deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, except as provided by the Texas Business Corporation Act.

SECTION ___. Section 4, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. EXEMPTION FROM LICENSING. (1) No license to sell checks as aforesaid shall be required hereunder of any of the following:

(a) Banks, credit unions, building and loan associations, and savings and loan associations, whether organized under the laws of this state or of the United States; provided, however, that they do not issue or sell checks, other than traveler's checks, off premises and that they do not issue or sell checks, other than traveler's checks, through agents who are not directly or indirectly owned by them;

(b) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph;

(c) Agents of a licensee, as provided in Section 11; [~~or~~]

(d) The United States or any department or agency of the United States;

(e) With the prior written consent of the Commissioner, a person holding a license under Article 350, Revised Statutes, if:

(i) the person has a net worth not less than $250,000 and meets all other licensing requirements of this Act;

(ii) the person maintains a bond in accordance with Section 7, except that the minimum principal amount of the bond shall be $350,000; and

(iii) the person sells checks only in conjunction with a currency exchange or transmission transaction, as defined by Article 350, Revised Statutes, and segregates all proceeds from the sale of checks.

(2) A person governed by Subsection (1)(e) of this section is subject to all other provisions of this Act to the extent the person engages in the business of selling checks and to rules adopted by the Commissioner to administer and carry out Subsection 1(e) of this section, including rules to:

(a) define or further define terms used in Subsection 1(e) of this section; and

(b) establish limits or requirements pertaining to bonding, net worth, and the sale of checks activities of a person under Subsection 1(e) of this section other than those specified by that subsection.

The amendment was read.

On motion of Senator Patterson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 752** by a viva voce vote.

SENATE BILL 1360 WITH HOUSE AMENDMENTS

Senator Cain called **S.B. 1360** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 1360** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the operation and management of the Texas Turnpike Authority; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. Section 1, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. CONSTRUCTION, MAINTENANCE AND OPERATION AUTHORIZED. To facilitate vehicular traffic throughout the State, to promote the agricultural and industrial development of the State, to assist in effecting traffic safety, to provide for the construction of modern expressways, to provide better connections between highways of the State of Texas and the highway system of adjoining states, including states of the United States and the United Mexican States, including cooperation between states, the Texas Turnpike Authority, hereinafter created, is hereby authorized and empowered to construct, maintain, repair and operate Turnpike Projects (as hereinafter defined), and to issue turnpike bonds of the Texas Turnpike Authority, payable solely from the revenues of such projects.

SECTION 1.02. Section 5, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. GENERAL GRANT OF POWERS AND DUTIES IMPOSED. The Authority is hereby authorized, empowered, and it shall be its duty:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To sue and be sued in its own name, plead and be impleaded; provided, however, that any and all actions at law or in equity against the Authority shall be brought in the county where the cause of action arises, and if land is involved, including condemnation proceedings, suit shall be brought in the county where the land is situated;

(d) To construct, maintain, repair and operate Turnpike Projects as hereinabove defined at such locations within the State as may be determined by the Authority subject to approval as to location by the Texas ~~[State Highway and Public~~] Transportation Commission; provided that the Authority shall have no power to fix, charge, or collect tolls for transit over any existing free public Highway unless the Texas Transportation Commission determines that it is necessary to transfer a public highway to the authority to accomplish needed enlargements, improvements, or extensions to the highway; if the commission determines the transfer necessary, the highway may be enlarged, improved, or extended by the authority as a turnpike project;

(e) To issue turnpike revenue bonds of the Authority payable solely from revenues, including tolls pledged to such bonds, except as

otherwise authorized by this Act, for the purpose of paying all or any part of the cost of a Turnpike Project; turnpike bonds shall be issued for each separate project;

(f) To fix, revise, and adjust from time to time tolls for transit over each separate Turnpike Project;

(g) To acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act;

(h) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, right-of-ways, property rights, easements and interests, as it may deem necessary for carrying out the provisions of this Act; provided, however, that except for parks and playgrounds and except for any property which may have been theretofore acquired under restrictions and limitations requiring payment of compensation, no compensation shall be paid for public lands, parkways or reservations so taken; and that all public property damaged in carrying out the powers granted by this Act, shall be restored or repaired and placed in its original condition as nearly as practicable; provided further, that the governing body having charge of any such public property is hereby authorized to give its consent to the use of any such property for a Turnpike Project; provided, further, that all property or interest so acquired shall be described in such a manner so as to locate the boundary line of same with reference to lot and block lines and corners of all existing and recorded subdivision properties and to locate the boundary line of other property with reference to survey lines and corners;

(i) To designate the location, and establish, limit and control such points of ingress to and egress from, each Turnpike Project as may be necessary or desirable in the judgment of the Authority and the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation to insure the proper operation and maintenance of such Project, and to prohibit entrance to such Project from any point or points not so designated; in all cases where county or other public roads are affected or severed, the Authority is hereby empowered and required to move and replace the same, with equal or better facilities; and all expenses and resulting damages, if any, shall be paid by the Authority;

(j) To make and enter into contracts and operating agreements with similar authorities or agencies of other states, including states in Mexico; to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Act; and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgments, and to fix their compensation; provided, that all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this Act or from revenues; and provided further that no

compensation for employees of Authority shall exceed the salary schedule of the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation for comparable positions and services;

(k) To receive and accept grants for or in aid of the construction of any Turnpike Project, and to receive and accept aid or contributions from any source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(l) To make and enforce rules and regulations not inconsistent with the provision of this Act for use of any such Project;

(m) All contracts of the Authority for the construction, improvement, repair, or maintenance of any turnpike project shall, in so far as applicable, be made and awarded under the same conditions, terms, requirements, and provisions as are now provided for with respect to contracts of the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation in Sections 8 and 9 of Chapter 186, pages 457, 458, Acts, Thirty-ninth Legislature, 1925 and Sections 10 and 13 of Chapter 186, page 458, Acts, Thirty-ninth Legislature, 1925, codified as Articles 6674h, 6674i, 6674j, and 6674m, Vernon's Civil Statutes, and in the making and awarding of such contracts the Authority shall, in so far as applicable, be under the same duties and responsibilities with respect thereto as are now imposed upon the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation by the terms and provisions of the Statutes herein enumerated; it is hereby declared to be the intention of the Legislature that the provision of this paragraph shall be mandatory;

(n) To do all acts and things necessary or appropriate to carry out the powers expressly granted in this Act;

(o) To develop and implement policies that provide the public with a reasonable opportunity to appear before the Board to speak on any issue under the jurisdiction of the Authority; and

(p) To prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the Authority's programs.

(q) The Texas Department of Transportation may provide for the expenditure of money from any source for the cost of a Turnpike Project. If money from the state highway fund is spent under this subsection, the fund shall be repaid from tolls or other turnpike revenue.

(r) The Board may hold an open or closed meeting by telephone conference call. The telephone conference call meeting is subject to the notice requirements applicable to other meetings of the Board. The notice of the telephone conference call meeting must specify as the location of the meeting the conference room of the authority. Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

SECTION 1.03. Sections 9(b) and (e), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The principal of, [~~and the~~] interest on, and any redemption premium on such bonds shall be payable solely from the funds herein or otherwise provided by law for such payment and from the revenues of the particular project for which such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates authorized by law, shall mature at such time or times, not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at such price or prices and under such terms and conditions as may be fixed by the Authority in the proceeding authorizing the issuance of the bonds.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the Turnpike Project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be on a parity with [~~of the same issue~~] and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost of the Turnpike Project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

SECTION 1.04. Section 10, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. TURNPIKE REVENUE REFUNDING BONDS. The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding, issued on account of a Project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions or enlargements to the Turnpike Project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this Act in so far as the same may be applicable. Within the discretion of the Authority the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of paying or providing for the payment of the [~~redeeming~~] outstanding bonds.

SECTION 1.05. Section 11(c), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) No trust agreement shall evidence a pledge of the revenues of any Project to any other purpose than (i) for the payment of the cost of maintaining, repairing and operating the Turnpike Project; (ii) for the payment of the principal of, [~~and~~] interest on, and any redemption premium on such bonds as the same shall become due and payable; (iii) to create and maintain reserves for such purposes, as prescribed in Section 12 hereof and (iv) as otherwise provided by law. However, surplus revenues may be used for another Turnpike Project as authorized by Section 20b of this Act.

SECTION 1.06. Section 12(a), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each Turnpike Project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, or may lease or sell any part thereof, including the right-of-way adjoining the paved portion, for placing thereon gas stations, garages, stores, hotels, restaurants, or for any other purpose including for tracks for railroad or railway use or for use by telephone, telecommunication [~~telegraph~~], electric light or power lines and to fix the terms, conditions, rents and rates of charges for such use or the terms and conditions of such lease or sale.

SECTION 1.07. Section 12e(d), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The Authority may use the revolving fund to:

(1) finance the construction, maintenance, or operation of Turnpike Projects authorized by this Act;

(2) provide matching amounts necessary for federal grants or other types of participatory funding;

(3) provide credit enhancement for bonds issued to construct, expand, or improve Turnpike Projects;

(4) provide security for, or payment of, future or existing debt for construction, operation, or maintenance of Turnpike Projects;

(5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this Act; and

(6) provide for any other reasonable purpose that assists in the financings [~~financing~~] of the Authority as authorized by this Act.

SECTION 1.08. The heading to Section 20a, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20a. [~~PRIVATE~~] PARTICIPATION IN PROJECTS.

SECTION 1.09. Section 20a, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas

Civil Statutes), is amended by amending Subsections (a), (b), and (g) and adding Subsection (h) to read as follows:

(a) The Authority may enter into agreements with public and private entities, including toll road corporations, to permit them, independently or jointly with the Authority, to construct, to maintain, to repair, and to operate turnpike projects;[;] and the Authority may authorize the investment of public and private funds, including debt and equity participation, as a means for financing all or any of the above functions.

(b) In the construction, maintenance, repair, and operation of any new turnpike project and the extension and expansion of any existing turnpike project by invested private funding, or by both public and private source funding, the Authority may utilize exclusive development agreements with private entities in which the Authority shall have broad latitude to negotiate the terms and conditions for the methods and types of financing and in which it may combine and negotiate any or all professional and consulting services, construction, operation, and maintenance of such turnpike projects.

(g) The Authority also may enter agreements with other governmental agencies and entities, including, but not limited to, Federal agencies, State agencies of this and other states, the United Mexican States and states of the United Mexican States [~~including states in Mexico~~], political subdivisions, and municipalities, independently or jointly with private entities to provide services, to study feasibility of projects, to finance, to construct, to operate, and to maintain turnpike projects pursuant to the other terms hereof.

(h) The Authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States. A fee or expense associated with Authority participation under this subsection may be reimbursed from money in the Texas Turnpike Authority feasibility study fund.

SECTION 1.10. Section 21, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. MISCELLANEOUS. (a) Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers, and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

(b) All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

(c) All counties, cities, villages, and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant, or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions, or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court, or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

(d) An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

(e) Any member, agent, or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars ($1,000).

(f) Any motor vehicle which is not a police or emergency vehicle, driven or towed through a toll collection facility, shall pay the proper toll. The Authority may use such technology, including automatic vehicle and vehicle license tag identification photography and video surveillance, as it deems necessary to aid in the collection of tolls and enforcement of toll violations by producing recorded images of vehicles driven or towed through toll collection facilities. All recorded images produced using such devices are for the exclusive use of the Authority in discharging its duties under this section and may not be available to the public or used in any court except as provided in this section [~~person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars ($100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid~~].

(g) In the event of nonpayment of the proper toll, as evidenced by video or other recording made pursuant to Subsection (f) of this section, and on issuance of a proper notice of nonpayment, the registered owner of the nonpaying vehicle shall be legally bound to pay both the proper toll and an administrative fee. The Authority is hereby authorized to fix, revise, charge, and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed one hundred dollars ($100). The notice of nonpayment to the registered owner shall be sent by first-class mail not later than 30 days after the alleged failure to pay and shall require payment not sooner than 30 days from the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment.

(h) If the registered owner of the vehicle fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment issued pursuant to Subsection (g) of this section, the registered owner shall be cited as for other traffic violations for the nonpayment, and the owner shall be legally bound to pay a fine, not to exceed two hundred fifty dollars ($250), for each event of nonpayment. Neither the legal obligation to pay nor the actual payment of the fine shall affect the legal duty of the owner for any other fine or penalty prescribed by law. In the prosecution of a violation under this subsection, proof, as evidenced by video or other recording, that the vehicle passed through a toll collection facility without payment of the proper toll, together with proof that the defendant was the registered owner of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The court of the local jurisdiction in which the violation occurred is authorized to assess and to collect the fine, in addition to any court costs, provided that the court must also collect the proper toll and administrative fee and forward the toll and fee to the Authority.

(i) It is a defense to nonpayment under Subsections (f) through (h) and (j) of this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, provided the theft was reported to the appropriate law enforcement authority before the earlier of (1) the occurrence of the failure to pay; or (2) eight hours after the discovery of the theft.

(j) A registered owner who is a lessor of a vehicle concerning which a notice of nonpayment was issued pursuant to Subsection (g) of this section shall not be legally bound in connection with that notice of nonpayment provided that, not later than 30 days from the date the notice of nonpayment is mailed, the registered owner provides to the Authority a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment, with the name and address of the lessee clearly legible. Failure to provide such information within the time period prescribed shall render the lessor legally bound as the registered owner. If the lessor provides the required information within the time period prescribed, the lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for purposes of this section and shall be subject to prosecution for failure to pay the proper toll as if the lessee were the registered owner, provided that the Authority sends a notice of nonpayment to the lessee by first-class mail within 30 days after the date of receipt of the required information from the lessor.

(k) For purposes of this section, a "transponder" means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued. Any law enforcement officer of the Department of Public Safety of the State of Texas has the authority to seize a stolen or insufficiently funded

transponder and to return it to the Authority, provided that an insufficiently funded transponder shall not be seized sooner than 30 days after the date the Authority has sent a notice of delinquency to the holder of the account.

(l) The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

SECTION 1.11. Section 27, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 27. PROJECT POOLING WITHIN THE SAME COUNTY. Notwithstanding any conflicting provisions in this Act and superseding the same where in conflict with this section, the authority is hereby authorized and empowered, but only as to projects located wholly or partly in a planning region of a council of governments created under Chapter 391, Local Government Code, [~~within the same county~~] and subject to all the provisions of this section:

(a) To determine after a public hearing, subject to prior approval by the Texas [~~State Highway and Public~~] Transportation Commission and a resolution approving the same duly passed by the county commissioners court of the county where the projects are located, that any two or more projects now or hereafter constructed or determined to be constructed by the authority in the same county shall be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects or parts thereof. Upon designation such "pooled project" shall become a "project" or "turnpike project" as defined in Section 4(c) of this Act and as used in other sections of this Act. No project may be pooled more than once. Consistent with the trust indenture regarding securing bonds of that project, the resolution of the county commissioners court shall set a date certain when each of the projects being authorized to be pooled shall become toll free.

(b) Subject to the terms of this Act and subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to provide by resolution from time to time for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any pooled project or the cost of any part of such pooled project and to pledge revenues of such pooled project or any part thereof.

(c) Subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to issue by resolution turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding, issued on account of any pooled project or any part of any pooled project issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the authority, for the additional purpose of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with

which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such refunding and improvement bonds. Such improvements, extensions, or enlargements are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority in respect of the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the authority, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Whether bonds be refunded or not, the authority may, subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, issue from time to time by resolution, bonds, of parity or otherwise, for the purpose of paying the cost of all or any part of any pooled project or for the purpose of constructing improvements, extensions, or enlargements to all or any part of any pooled project and to pledge revenues of all or any part of such pooled project to the payment thereof.

ARTICLE 2

SECTION 2.01. Section 361.031(c), Transportation Code, is amended to read as follows:

(c) The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and

(2) an essential governmental function of the state.

SECTION 2.02. Section 361.032, Transportation Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) A majority of the board is a quorum, and the vote of a majority shall be necessary for any action taken by the board.

(i) A vacancy in the membership of the board does not impair the right of a quorum to exercise a right or perform a duty of the board.

SECTION 2.03. Subchapter B, Chapter 361, Transportation Code, is amended by adding Section 361.0485 to read as follows:

Sec. 361.0485. BOARD MEETING BY TELEPHONE CONFERENCE CALL. (a) The board may hold an open or closed meeting by telephone conference call.

(b) The telephone conference call meeting is subject to the notice requirements applicable to other meetings of the board.

(c) The notice of the telephone conference call meeting must specify as the location of the meeting the conference room of the authority.

(d) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written

minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

SECTION 2.04. Section 361.101, Transportation Code, is amended to read as follows:

Sec. 361.101. DETERMINATION OF TURNPIKE PROJECTS. The authority may:

(1) construct, maintain, repair, and operate a turnpike project to:

(A) facilitate vehicular traffic throughout this state;

(B) promote the agricultural and industrial development of this state;

(C) effect traffic safety; or

(D) improve connections between highways of this state, [~~and of~~] adjoining states, and the United Mexican States; and

(2) at any time determine to undertake a turnpike project, except that the commission must approve the location of the project before final designation.

SECTION 2.05. Section 361.171(e), Transportation Code, is amended to read as follows:

(e) If the proceeds of a bond issue are less than the turnpike project cost, additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with [~~of the same issue~~] and are payable from the same fund without preference or priority of the bonds first issued.

SECTION 2.06. Section 361.173(a), Transportation Code, is amended to read as follows:

(a) The principal of, [~~and~~] interest on, and any redemption premium on bonds issued by the authority are payable solely from:

(1) the money authorized for their payment under this chapter or other law; and

(2) the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds.

SECTION 2.07. Section 361.175(c), Transportation Code, is amended to read as follows:

(c) The authority may:

(1) issue refunding bonds in exchange for outstanding bonds; or

(2) sell refunding bonds and use the proceeds to pay or provide for the payment of the [~~redeem~~] outstanding bonds.

SECTION 2.08. Section 361.176(c), Transportation Code, is amended to read as follows:

(c) A trust agreement may not evidence a pledge of the revenue of a turnpike project except:

(1) to pay the cost of maintaining, repairing, and operating the project;

(2) to pay the principal of, [~~and~~] interest on, and any redemption premium on the bonds as they become due and payable;

(3) to create and maintain reserves for the purposes described by Subdivisions (1) and (2), as prescribed by Section 361.179; and

(4) as otherwise provided by law.

SECTION 2.09. Section 361.179(a), Transportation Code, is amended to read as follows:

(a) The authority may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) contract with a person for the use of part of a turnpike project or lease or sell part of a turnpike project, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, railroad tracks, telephone line, telecommunication [~~telegraph~~] line, and electric line, and set the terms for the use, lease, or sale.

SECTION 2.10. Section 361.180, Transportation Code, is amended to read as follows:

Sec. 361.180. PROHIBITION ON TOLLS ON EXISTING FREE HIGHWAYS. The authority may [~~not~~] impose a toll for transit over an existing free public highway only if such highway is transferred to the authority by the commission under Section 362.0041.

SECTION 2.11. Section 361.184(c), Transportation Code, is amended to read as follows:

(c) The authority may use money in the project revolving fund to:

(1) finance the construction, maintenance, or operation of a turnpike project;

(2) provide matching money necessary for a federal grant or other type of participatory funding;

(3) provide credit enhancement for bonds issued to construct, expand, or improve a turnpike project;

(4) provide security for or payment of future or existing debt for construction, operation, or maintenance of a turnpike project;

(5) borrow money and issue promissory notes or other indebtedness payable out of the fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financings [~~financing~~] of the authority as authorized by this chapter.

SECTION 2.12. The heading to Section 361.187, Transportation Code, is amended to read as follows:

Sec. 361.187. EXEMPTION FROM TAXATION OR ASSESSMENT.

SECTION 2.13. Section 361.187(a), Transportation Code, is amended to read as follows:

(a) The authority is exempt from taxation of or assessments on:

(1) a turnpike project;

(2) property the authority acquires or uses under this chapter; or

(3) income from property described by Subdivision (1) or (2).

SECTION 2.14. Subchapter E, Chapter 361, Transportation Code, is amended by adding Section 361.191 to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY DEPARTMENT OF TRANSPORTATION. (a) The Texas Department of Transportation may provide for the expenditure of money from any source for the cost of a turnpike project.

(b) If money from the state highway fund is spent under this section, the fund shall be repaid from tolls or other turnpike revenue.

SECTION 2.15. Subchapter G, Chapter 361, Transportation Code, is amended by amending Section 361.252 and adding Sections 361.253-361.255 to read as follows:

Sec. 361.252. FAILURE OR REFUSAL TO PAY TOLL; IDENTIFICATION AND SURVEILLANCE. (a) Any motor vehicle that is not a police or emergency vehicle, driven or towed through a toll collection facility, shall pay the proper toll. [~~A person who uses a turnpike project and fails or refuses to pay a toll provided for using the project is liable for a fine not to exceed $100.~~]

(b) The authority may use the technology, including automatic vehicle and vehicle license tag identification photography and video surveillance, as it considers necessary to aid in the collection of tolls and enforcement of toll violations by producing recorded images of vehicles driven or towed through toll collection facilities [~~The authority has a lien on the vehicle driven by the person for the amount of the toll and may take and retain the vehicle until the toll and related charges have been paid~~].

(c) All recorded images produced using the devices are for the exclusive use of the authority in discharging its duties under this section and may not be available to the public or used in any court except as provided in this subchapter.

Sec. 361.253. ADMINISTRATIVE FEE; NOTICE. (a) In the event of nonpayment of the proper toll, as evidenced by video or other recording made under Section 361.252, and on issuance of a proper notice of nonpayment, the registered owner of the nonpaying vehicle is legally bound to pay both the proper toll and an administrative fee.

(b) The authority may fix, revise, charge, and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed $100. The notice of nonpayment to the registered owner shall be sent by first-class mail not later than 30 days after the date of the alleged failure to pay and may require payment not sooner than 30 days from the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment.

(c) If the registered owner of the vehicle fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment issued under this section, the registered owner shall be cited as for other traffic violations for the nonpayment, and the owner is legally bound to pay a fine, not to exceed $250, for each event of nonpayment. Neither the legal obligation to pay nor the actual payment of the fine shall affect the legal duty of the owner for any other fine or penalty prescribed by law.

Sec. 361.254. PROSECUTIONS. (a) In the prosecution of a violation under Section 361.252 or 361.253, proof, as evidenced by video or other recording, that the vehicle passed through a toll collection facility without payment of the proper toll, together with proof that the defendant was the registered owner of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner.

(b) The court of the local jurisdiction in which the violation occurred may assess and collect the fine, in addition to any court costs. The court shall also collect the proper toll and administrative fee and forward the toll and fee to the authority.

(c) It is a defense to nonpayment under Section 361.252 or 361.253 that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

(d) A registered owner who is a lessor of a vehicle concerning which a notice of nonpayment was issued under Section 361.253 is not liable in connection with that notice of nonpayment if, not later than 30 days after the date the notice of nonpayment is mailed, the registered owner provides to the authority a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment, with the name and address of the lessee clearly legible. Failure to provide this information within the period prescribed renders the lessor liable as the registered owner. If the lessor provides the required information within the period prescribed, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this section and is subject to prosecution for failure to pay the proper toll as if the lessee were the registered owner, if the authority sends a notice of nonpayment to the lessee by first-class mail within 30 days after the date of receipt of the required information from the lessor.

Sec. 361.255. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, a "transponder" means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any law enforcement officer of the Department of Public Safety of the State of Texas has the authority to seize a stolen or insufficiently funded transponder and to return it to the authority, except that an insufficiently funded transponder may not be seized sooner than 30 days after the date the authority has sent a notice of delinquency to the holder of the account.

SECTION 2.16. The heading to Subchapter I, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER I. [~~PRIVATE~~] PARTICIPATION IN TURNPIKE PROJECTS

SECTION 2.17. Section 361.301, Transportation Code, is amended to read as follows:

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. (a) The authority may enter into an agreement with a public or private entity, including a toll road corporation, to permit

the entity, independently or jointly with the authority, to construct, maintain, repair, and operate turnpike projects.

(b) The authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

SECTION 2.18. Section 361.302, Transportation Code, is amended to read as follows:

Sec. 361.302. EXCLUSIVE DEVELOPMENT AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES. The authority may use an exclusive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project by invested private funding or by public and private funding. The authority:

(1) has broad discretion to negotiate the terms of financing; and

(2) may negotiate provisions relating to professional and consulting services with regard to the turnpike project and to the construction, maintenance, and operation of the project, including provisions for combining those services.

SECTION 2.19. Section 361.307, Transportation Code, is amended to read as follows:

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. The authority and a private entity jointly may enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

SECTION 2.20. Subchapter I, Chapter 361, Transportation Code, is amended by adding Section 361.308 to read as follows:

Sec. 361.308. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) The authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

(b) A fee or expense associated with authority participation under this section may be reimbursed from money in the Texas Turnpike Authority feasibility study fund.

SECTION 2.21. Section 361.331, Transportation Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The authority may designate two or more turnpike projects that are wholly or partly located in a planning region of a council of governments [~~the same county~~] as a pooled turnpike project after:

(1) conducting a public hearing;

(2) obtaining the approval of the commission; and

(3) obtaining a resolution adopted by the commissioners court of the county that:

(A) approves the action; and

(B) specifies the date the pooled project becomes toll free.

(e) In this section, "council of governments" means a council of governments created under Chapter 391, Local Government Code.

SECTION 2.22. Sections 362.001(1) and (4), Transportation Code, are amended to read as follows:

(1) "Authority" means the Texas Turnpike Authority and includes the entity that succeeds to the principal functions of the authority or to whom by law the powers of the authority are given [~~or its successor~~].

(4) "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a defined district, or a nonprofit corporation, including a transportation corporation created under Chapter 431.

SECTION 2.23. Section 362.003, Transportation Code, is amended to read as follows:

Sec. 362.003. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) This chapter is cumulative of all laws affecting the issuance of bonds by local governmental entities, particularly, but not by way of limitation, provisions of Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), are applicable to and apply to all bonds issued to this chapter, regardless of any classification of any such local governmental entities thereunder; provided, however, in the event of any conflict between such laws and this chapter, the provisions of this chapter prevail. [~~Bonds issued by a local governmental entity under this subchapter are subject to all laws affecting the issuance of bonds by a local governmental entity, including Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).~~]

(b) This chapter is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this chapter, the provisions of this chapter prevail. [~~Bonds issued by the authority under this subchapter are subject to all laws affecting the issuance of bonds by the authority.~~]

(c) This chapter is cumulative of all laws affecting the authority, and the authority is authorized to enter into all agreements necessary or convenient to effectuate the purposes of this chapter. Particularly, but not by way of limitation, the provisions of Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), are applicable to the bonds issued by the

authority under this chapter [~~subchapter prevails to the extent of any conflict between this subchapter and another law affecting the commission, the department, or a local governmental entity~~].

SECTION 2.24. Section 362.004, Transportation Code, is amended by amending Subsection (c) and adding Subsections (e) and (f) to read as follows:

(c) An agreement under this section may:

(1) be payable from any money lawfully available to the department;

(2) be subject to legislative appropriation if the intended source of payment requires legislative appropriation;

(3) specify the length of time the turnpike project will remain a toll facility;

(4) specify the use of the revenue from the project; [~~and~~]

(5) provide for the use of revenue from any turnpike project for a turnpike project that is an extension of the original project or is part of an integrated system of turnpike projects; or

(6) provide for the expenditure of money from any source for the cost of a turnpike project.

(e) If money from the state highway fund is spent under an agreement under this section, the authority shall repay the fund from tolls or other turnpike revenue.

(f) If the commission finds that the state highway system, the state's transportation needs, and overall mobility of the traveling public will be enhanced, the commission may enter into an agreement with the authority providing for the advance of funds to the authority to be used for any purpose of the revolving fund established and administered by the authority under Section 361.184, provided that any money advanced out of the state highway fund shall be repaid to the fund from tolls or other turnpike revenue.

SECTION 2.25. Subchapter A, Chapter 362, Transportation Code, is amended by adding Section 362.0041 to read as follows:

Sec. 362.0041. ACQUISITION OF PROJECTS. (a) If the commission finds that the conversion of a segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary expansion improvements, or extensions to the state highway system, that segment may, upon approval of the governor, be transferred by order of the commission to the authority. The authority may receive such segment of highway, thereafter to be owned, operated, and maintained as a turnpike project under Chapter 361.

(b) The authority shall reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the

acquisition of necessary right-of-way, and actual construction of the highway and all necessary appurtenant facilities.

(c) The commission shall, coincident with the transfer, remove the segment of highway from the designated state highway system and shall subsequently have no liability, responsibility, or duty for the maintenance or operation of the highway.

(d) Prior to transferring a segment of the state highway system under this section, the commission shall conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. Notice of the hearing shall be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved highway is located.

(e) The commission shall adopt rules implementing this section, such rules to include criteria and guidelines for the approval of a transfer of a highway.

SECTION 2.26. Section 362.007, Transportation Code, is amended to read as follows:

Sec. 362.007. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the authority, not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of turnpike projects of the authority, or in aid thereof [~~Subsection (b), Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may:~~

[~~(1) agree with the authority to issue bonds and to make payments to aid in the construction, maintenance, or operation of a turnpike project of the authority; and~~

[~~(2) impose taxes to pay the interest on bonds issued under Subdivision (1)~~].

(b) In addition to Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with the authority to issue bonds or enter into and make payments under an agreement to construct, maintain, or operate any portion of a turnpike project of the authority.

(c) To make payments under an agreement under Subsection (b) or pay the interest on bonds issued under Subsection (b) and to provide a sinking fund for the bonds or the contract, a local governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) levy and collect [~~impose~~] taxes; or [~~and~~]

(3) provide for a combination of Subdivisions (1) and (2) [~~sinking fund~~].

(d) The term of an agreement under this section may not exceed 40 years.

(e) Any [~~An~~] election required to permit action under this subchapter must be held in conformance with Chapter 1, Title 22, Revised Statutes, or other law applicable to the local governmental entity.

ARTICLE 3

SECTION 3.01. This Act takes effect September 1, 1995.

SECTION 3.02. (a) Article 1 of this Act takes effect only if **S.B. 971**, 74th Legislature, Regular Session, 1995, does not become law. If **S.B. 971** becomes law, Article 1 of this Act has no effect.

(b) Article 2 of this Act takes effect only if **S.B. 971**, 74th Legislature, Regular Session, 1995, becomes law. If **S.B. 971**, 74th Legislature, Regular Session, 1995, does not become law, Article 2 of this Act has no effect.

SECTION 3.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 on Third Reading

Amend **C.S.S.B. 1360** on third reading as follows:

(1) In SECTION 1.01 of the bill, proposed Section 1(q), Article 6674v, Vernon's Texas Civil Statutes (committee printing, page 6, line 12), by striking "from any source".

(2) In SECTION 2.14 of the bill, proposed Section 361.191(a), Transportation Code (committee printing, page 24, line 23), by striking "from any source".

Floor Amendment No. 2 on Third Reading

Amend **C.S.S.B. 1360** on third reading as follows:

(1) In SECTION 1.10 of the bill (committee printing, page 13, line 19, through page 14, line 9), strike Section 21(f), Article 6674v, Vernon's Texas Civil Statutes, and substitute the following:

(f) Any motor vehicle which is not a police or emergency vehicle, driven or towed through a toll collection facility, shall pay the proper toll [~~person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars ($100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid~~].

(2) In SECTION 1.10 of the bill, in proposed Section 21(g), Article 6674v, Vernon's Texas Civil Statutes (committee printing, page 14,

lines 10-12), strike "as evidenced by video or other recording made pursuant to Subsection (f) of this section, and".

(3) In SECTION 2.15 of the bill (committee printing, page 25, lines 4-22), strike Section 361.252, Transportation Code, and substitute the following:

Sec. 361.252. FAILURE OR REFUSAL TO PAY TOLL. Any motor vehicle that is not a police or emergency vehicle, driven or towed through a toll collection facility, shall pay the proper toll. [~~(a) A person who uses a turnpike project and fails or refuses to pay a toll provided for using the project is liable for a fine not to exceed $100.~~

[~~(b) The authority has a lien on the vehicle driven by the person for the amount of the toll and may take and retain the vehicle until the toll and related charges have been paid.~~]

(4) In SECTION 2.15 of the bill, in proposed Section 361.253(a), Transportation Code (committee printing, page 25, lines 24 and 25), strike "as evidenced by video or other recording made under Section 361.252, and".

(5) In SECTION 2.15 of the bill, in proposed Section 361.254(a), Transportation Code (committee printing, page 26, lines 20 and 21), strike ", as evidenced by video or other recording,".

The amendments were read.

On motion of Senator Cain and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1360** by a viva voce vote.

SENATE BILL 1439 WITH HOUSE AMENDMENT

Senator Brown called **S.B. 1439** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 1439** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the nonsubstantive codification of provisions relating to arbitration.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 10, Revised Statutes, is redesignated as Chapters 171 and 172, Title 7, Civil Practice and Remedies Code, and amended to read as follows:

CHAPTER 171. [~~TITLE 10—ARBITRATION~~
[~~1. TEXAS~~] GENERAL ARBITRATION [~~ACT~~]

Sec. 171.001 [~~Art. 224~~]. VALIDITY OF ARBITRATION AGREEMENTS. A written agreement to submit any existing controversy

to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. A court shall refuse to enforce an agreement or contract provision to submit a controversy to arbitration if the court finds it was unconscionable at the time the agreement or contract was made. Provided, however, that none of the provisions of this chapter [~~Act~~] shall apply to:

(a) any collective bargaining agreement between an employer and a labor union;

(b) any contract for the acquisition by an individual person or persons (as distinguished from a corporation, trust, partnership, association, or other legal entity) of real or personal property, or services, or money or credit where the total consideration therefor to be paid or furnished by the individual is $50,000 or less, unless said individual and the other party or parties agree in writing to submit to arbitration and such written agreement is signed by the parties to such agreement and their attorneys; or

(c) any claim for personal injury except upon the advice of counsel to both parties as evidenced by a written agreement signed by counsel to both parties. A claim for workers' compensation shall not be submitted to arbitration under this chapter [~~Act~~].

Sec. 171.002 [~~Art. 225~~]. PROCEEDINGS TO COMPEL OR STAY ARBITRATIONS. (a) [~~Sec. A.~~] On application of a party showing an agreement described in Section 171.001 [~~Article 224 of this Act~~], and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

(b) [~~Sec. B.~~] On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) [~~Sec. C.~~] If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under Section 171.011(a) [~~A of Article 234 of this Act~~], the application shall be made therein. Otherwise and subject to Section 171.012 [~~Article 235 of this Act~~], the application may be made in any court of competent jurisdiction.

(d) [~~Sec. D.~~] Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under the provisions of this section [~~Article 225~~], or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) [~~Sec. E.~~] An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

Sec. 171.003 [~~Art. 226~~]. APPOINTMENT OF ARBITRATORS BY COURT. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party setting forth the nature of the issues to be arbitrated and the qualifications of the proposed arbitrators shall appoint one or more qualified arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Sec. 171.004 [~~Art. 227~~]. MAJORITY ACTION BY ARBITRATORS. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter [~~Act~~].

Sec. 171.005 [~~Art. 228~~]. HEARINGS BEFORE ARBITRATORS AND NOTICES THEREOF. (a) Unless otherwise provided by the agreement, the[~~:~~

[~~Sec. A. The~~] arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail with return receipt requested not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) Unless otherwise provided by the agreement, the [~~Sec. B. The~~] parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) Unless otherwise provided by the agreement, the [~~Sec. C. The~~] hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

Sec. 171.006 [~~Art. 229~~]. REPRESENTATION BY ATTORNEYS. A party has the right to be represented by an attorney at any proceeding or hearing under this chapter [~~Act~~]. A waiver thereof prior to the proceeding or hearing is ineffective.

Sec. 171.007 [~~Art. 230~~]. TESTIMONY AT HEARINGS BEFORE ARBITRATORS BY WITNESSES; SUBPOENAS AND DISPOSITIONS THEREFOR. (a) [~~Sec. A.~~] The arbitrators shall have the power to administer oaths required of witnesses in a civil action pending in a district

court and may cause same to be administered by any one of them, to each witness testifying before them.

(b) [~~Sec. B.~~] The arbitrators may authorize a deposition to be taken of a witness who cannot be required by subpoena to appear before them or who is unable to attend the hearing, for use as evidence, or may authorize a deposition of an adverse witness for discovery or evidentiary purposes, such depositions to be taken in the manner provided by law for depositions in a civil action pending in a district court.

(c) [~~Sec. C.~~] The arbitrators may issue or cause to be issued by any one of them, subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; the appearance of the witness required by such a subpoena may be either at the hearing before the arbitrators or at the deposition of the witness. Subpoenas so issued shall be served in the manner provided by law for the service of subpoenas issued in a civil action pending in a district court. All provisions of law requiring a witness under subpoena to appear, to produce and to testify, pursuant to a subpoena issued in such a civil action, shall apply to subpoenas issued under this section [~~Article~~].

(d) [~~Sec. D.~~] Fees for witnesses attending any hearing before arbitrators or any deposition pursuant to the provisions of this section [~~Article,~~] shall be the same as for a witness in a civil action in a district court.

Sec. 171.008 [~~Art. 231~~]. AWARDS BY ARBITRATORS. (a) [~~Sec. A.~~] The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail, or as provided in the agreement.

(b) [~~Sec. B.~~] An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

Sec. 171.009 [~~Art. 232~~]. CHANGES OF AWARDS BY ARBITRATORS. On application of a party or, if an application to the court is pending under Sections 171.013, 171.014, and 171.015 [~~Articles 236, 237 and 238~~], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in Section 171.016(a) [~~A of Article 238~~], or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Sections 171.013, 171.014, and 171.015 [~~Articles 236, 237 and 238~~].

Sec. 171.010 [~~Art. 233~~]. FEES AND EXPENSES OF ARBITRATIONS AS AWARDED BY ARBITRATORS. Unless otherwise provided in the

agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses incurred in the conduct of the arbitration, shall be paid as provided in the award. Attorneys fees shall be awarded by the arbitrators as additional sums required to be paid under the award only if provided for in the agreement to arbitrate or provided by law as to any recovery in a civil action in the district court on such a cause of action on which the award in whole or in part is based.

Sec. 171.011 [~~Art. 234~~]. COURTS WITH JURISDICTION IN ARBITRATION PROCEEDINGS. (a) [~~Sec. A.~~] The term "court" as used in this chapter [~~Act~~] shall mean and include any court of this State of competent jurisdiction as to the parties, the subject matter, and the amount in controversy. Such a court shall have jurisdiction to hear and determine applications as provided in Section 171.012 [~~Article 235~~].

(b) [~~Sec. B.~~] The making of an agreement described in Section 171.001 [~~Article 224~~] and to which that section [~~Article~~] is applicable (but this expressly shall not be the effect of the making of an agreement to which that section [~~Article~~] is made inapplicable by the last sentence thereof), which provides for or authorizes an arbitration in this State, confers jurisdiction on the court to enforce the agreement under this chapter [~~Act~~] and to enter judgment on an award thereunder.

Sec. 171.012 [~~Art. 235~~]. APPLICATIONS TO COURTS AND THE EFFECT THEREOF; COURT PROCEEDINGS ON APPLICATIONS TO COURTS; VENUE THEREOF; STAY OF PROCEEDINGS IN ANOTHER COURT PURSUANT TO A LATER APPLICATION; WHAT THE COURT MAY REQUIRE THAT AN APPLICATION CONTAIN; WHEN APPLICATIONS MAY BE FILED IN ADVANCE OF OR PENDING OR AT OR AFTER THE CONCLUSION OF ARBITRATION PROCEEDINGS; ACQUISITION OF JURISDICTION OVER ADVERSE PARTIES BY SERVICE OF PROCESS OR IN REM BY ANCILLARY PROCEEDINGS; COURT RELIEF IN AID OF PENDING OR PROSPECTIVE ARBITRATION PROCEEDINGS OR THE ENFORCEMENT OF COURT ORDERS OR DECREES OR SATISFACTION OF COURT JUDGMENTS; COURT HEARINGS ON APPLICATIONS. (a) [~~Sec. A.~~] The jurisdiction of a court may be invoked by the filing with the clerk of that court of an application for the entry by the court of a judgment or decree or order provided for by the terms of this Chapter [~~Act~~]. Upon the filing of the initial application and the payment to the clerk of the fees of court required to be paid on the filing of a civil action in the court, the clerk shall docket the proceedings as a civil action pending in that court.

(b) [~~Sec. B.~~] The filing of the initial application shall be with the clerk of the court of that county in Texas in which (if it does so provide) the arbitration agreement shall provide that the hearing before the arbitrators shall be held; or if the hearing has been held, in the county in which it was held. Otherwise, the initial application shall be filed in the county in which the adverse party resides (or one of them if there are two or more adverse parties) or has a place of business; or if no adverse party has a residence or place of business in this State, in any county. The initial application filed with the clerk of a court having jurisdiction but in a

county other than as provided for in this subsection [~~Section~~], shall be transferred to a court of the county provided for in this subsection [~~Section~~] by an order comparable to an order sustaining a plea of privilege to be sued in a civil action in a district court of a county other than the county in which an action is filed; provided that such order of transfer shall be entered only if applied for by a party adverse to the applicant who files the initial application, within twenty days of the service of process on such adverse party and in advance of any other appearance in the court of that adverse party other than one challenging the jurisdiction of the court.

(c) [~~Sec. C.~~] An initial application having been so filed, the court having jurisdiction thus invoked, may by order or orders stay proceedings pursuant to any application later filed seeking to invoke the jurisdiction of any other court or the entry of a judgment or decree or order provided for by the terms of this chapter [~~Act~~]; or may stay any civil action or other proceeding later instituted; provided, however, that any such stay of proceedings in any civil action or other proceeding or pursuant to an application later filed in any other court shall be limited to and affect only an issue subject to arbitration under the arbitration agreement pursuant to the terms of which the initial application was so filed.

(d) [~~Sec. D.~~] As provided in Section 171.002(c) [~~C of Article 225~~], the initial application and all subsequent applications to the court relating to arbitration of an issue subject to arbitration under an arbitration agreement shall be filed in a civil action or proceeding pending in a court having jurisdiction to hear applications under the provisions of Section 171.011(a) [~~A of Article 234~~] if the civil action or proceeding is pending before the filing of the initial application as otherwise provided by Section 171.012(a) [~~A of Article 235~~].

(e) [~~Sec. E.~~] The court may require that an application filed under this chapter [~~Act~~] for entry by it of any judgment or decree or order shall show the jurisdiction of the court, shall have attached to it a copy of the arbitration agreement, shall define the issue or issues subject to arbitration between the parties under the arbitration agreement, shall specify the status of the proceedings before arbitrators and show the need for the entry of the judgment, decree or order by the court sought by the applicant. No application shall be deemed inadequate because of the absence of any of these requirements unless the court shall, in its discretion, first require that the application as filed be amended to meet the requirements of the court and a period of ten days is granted to the applicant to permit him to comply.

(f) [~~Sec. F.~~] An application for entry by the court of a judgment or decree or order provided for by the terms of this chapter [~~Act~~] may be filed in advance of the institution of any arbitration proceedings but in aid thereof, or during the pendency of any arbitration proceeding before the arbitrators or, subject to the provisions of subsequent sections [~~Articles~~] of this chapter [~~Act~~], at or after the conclusion thereof.

(g) [~~Sec. G.~~] In advance of the institution of any arbitration proceedings, but in aid thereof, an application may be filed for order or orders to be entered by the court, including but not limited to applications:

(1) [~~(i)~~] invoking the jurisdiction of the court over the adverse party and for effecting same by service of process on him in advance of the institution of arbitration proceedings (it not being required to be shown in this connection that the adverse party is about to, or may, absent himself from the state if jurisdiction over him is not effected by service of process on him before the institution of arbitration proceedings);

(2) [~~or (ii)~~] invoking the jurisdiction of the court over the controversy in rem, by attachment, garnishment, sequestration, or any other ancillary proceeding in the manner by which, and on complying with the conditions under which, such proceedings may be instituted and conducted ancillary to a civil action in a district court;

(3) [~~or (iii)~~] seeking to restrain or enjoin the destruction of the subject matter of the controversy or any essential part thereof, or the destruction or alteration of books, records, documents, or evidence needed for the arbitration proceeding, or seeking from the court in its discretion, order for deposition or depositions needed in advance of the commencement of the arbitration proceedings for discovery, for perpetuation of testimony or for evidence;

(4) [~~or (iv)~~] seeking the appointment of arbitrator or arbitrators so that proceedings before them under the arbitration agreement may proceed; or

(5) [~~(v)~~] seeking any other relief, which the court can grant in its discretion, needed to permit the orderly arbitration proceedings to be instituted and conducted and to prevent any improper interference or delay thereof.

(h) [~~Sec. H.~~] During the pendency of any arbitration proceedings before the arbitrators, an application may be filed for order or orders to be entered by the court, including but not limited to applications:

(1) [~~(i)~~] referred to or to serve any purpose referred to in Subsection (g) [~~Section G of this Article~~]; [~~or~~]

(2) [~~(ii)~~] to require compliance by any adverse party or any witness with order or orders made by arbitrators during the arbitration proceedings, pursuant to provisions of this chapter [~~Act~~]; [~~or~~]

(3) [~~(iii)~~] to require the issuance and service under orders of the court rather than orders made by the arbitrators, of subpoenas, notices or other court processes in aid of the arbitration proceedings before the arbitrators; or in any ancillary proceedings in rem by attachment, garnishment, sequestration or otherwise, in the manner of and on complying with the conditions under which such ancillary proceedings may be instituted and conducted ancillary to a civil action in a district court; or

(4) [~~(iv)~~] to seek to effect or maintain security for the satisfaction of any court judgment that may be later entered pursuant to the provisions of an award. During the pendency of the arbitration proceedings or at or after their conclusion, an application may be filed to seek any of the above mentioned relief or otherwise aid in the enforcement of any court judgment or decree or order entered pursuant to the provisions of this chapter [~~Act~~]; or for relief as provided in Sections 171.013, 171.014, and 171.015 [~~Articles 236, 237 and 238~~].

(i) [~~Sec. I.~~] On filing of any initial application herein authorized, the clerk of the court shall issue process for service upon each adverse party named therein, attaching a copy of the application to each, and appropriate officials authorized so to do may proceed to effect service of such process on each adverse party, the form and substance of the process and service and the return of service, insofar as applicable, being the form provided for as to process and service on a defendant in a civil action in a district court.

(j) [~~Sec. J.~~] Upon the filing of any application other than the initial application, if the jurisdiction over the adverse party has been established by service of process on him or in rem upon the initial application (though, if not, then on such subsequent application there shall be a service of process as provided for in Subsection (i) [~~Section I of this Article~~]), each subsequent application with reference to the same arbitration proceedings or prospective proceedings under the same arbitration agreement and relating to the same controversy or controversies, shall be treated for the purposes of notice to each adverse party, as if a motion filed in a pending civil action in a district court. Every such subsequent application to the court for any relief and every initial application shall be heard by the court in the manner and pursuant to the notice provided by law or rule of court as to the making and hearing of such a motion.

Sec. 171.013 [~~Art. 236~~]. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 171.014 and 171.015 [~~Articles 237 and 238 of this Act~~].

Sec. 171.014 [~~Art. 237~~]. VACATING AN AWARD. (a) [~~Sec. A.~~] Upon application of a party, the court shall vacate an award where:

(1) the [~~The~~] award was procured by corruption, fraud or other undue means;

(2) there [~~There~~] was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct or wilful misbehavior of any of the arbitrators prejudicing the rights of any party;

(3) the [~~The~~] arbitrators exceeded their powers;

(4) the [~~The~~] arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 171.005 [~~Article 228~~], as to prejudice substantially the rights of a party; or

(5) there [~~There~~] was no arbitration agreement and the issue was not adversely determined in proceedings under Section 171.002 [~~Article 225~~] and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) [~~Sec. B.~~] An application under this section [~~Article~~] shall be made within ninety days after delivery of a copy of the award to the applicant,

except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) [~~Sec. C.~~] In vacating the award on grounds other than stated in Subsection (a)(5) [~~paragraph 5 of Section A of this Article~~], the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with the provisions of Section 171.003 [~~Article 226~~]; or, if the award is vacated on grounds set forth in Subsections (a)(3) and (4) [~~paragraphs 3 and 4 of Section A of this Article~~], the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with the provisions of Section 171.003 [~~Article 226~~]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) [~~Sec. D.~~] If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Sec. 171.015 [~~Art. 238~~]. MODIFICATION OR CORRECTION OF AWARD. (a) [~~Sec. A.~~] Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) there [~~There~~] was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(2) the [~~The~~] arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the [~~The~~] award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) [~~Sec. B.~~] If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) [~~Sec. C.~~] An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Sec. 171.016 [~~Art. 238-1~~]. JUDGMENT OR DECREE UPON AN AWARD; THE ENFORCEMENT THEREOF. Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

Sec. 171.017 [~~Art. 238-2~~]. APPEALS. (a) [~~Sec. A.~~] An appeal may be taken from:

(1) an [~~An~~] order denying an application to compel arbitration made under Section 171.002(a) [~~A of Article 225~~];

(2) an [~~An~~] order granting an application to stay arbitration made under Section 171.002(b) [~~B of Article 225~~];

(3) an [~~An~~] order confirming or denying confirmation of an award;

(4) an [~~An~~] order modifying or correcting an award;

(5) an [~~An~~] order vacating an award without directing a rehearing; or

(6) a [~~A~~] judgment or decree entered pursuant to the provisions of this chapter [~~Act~~].

(b) [~~Sec. B.~~] The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Sec. 171.018. EFFECTIVE DATE OF CHAPTER. This chapter [~~Art. 238-3. ACT NOT RETROACTIVE. The Act~~] applies only to agreements made on or after January 1, 1966 [~~subsequent to the taking effect of this Act~~].

Sec. 171.019 [~~Art. 238-4~~]. UNIFORMITY OF INTERPRETATION. This chapter [~~Act~~] shall be so construed as to effectuate its general purpose and make uniform the construction of those [~~articles and~~] sections that are enacted into the law of arbitration proceedings of other states.

Sec. 171.020 [~~Art. 238-5~~]. SEVERABILITY. If any provision of this chapter [~~Act~~] or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter [~~Act~~] which can be given effect without the invalid provision or application, and to this end the provisions of this chapter [~~Act~~] are severable.

[~~Art. 238-6. NAME OF THIS ACT; DEFINITION OF TERM "THIS ACT"; EFFECT OF DIVISION INTO ARTICLES, SECTIONS, AND PARAGRAPHS AND OF CAPTIONS OF ARTICLES. The name of this Act is "Texas General Arbitration Act." The term "this act" as used therein shall mean and refer to Article 224 through this Article 238-6, inclusive. This Act is divided into articles with a caption for each, with a number assigned to each article, certain of the articles are divided into sections with a capital letter assigned to each section and certain of the sections are subdivided into paragraphs with a parenthetical number assigned to each such paragraph. These subdivisions of this Act however are for purposes of convenience only and in order that there may be references in one provision of the Act to other provision or provisions of the Act more readily; neither any such subdivision of the Act nor any caption for any article however shall be any aid to or given any effect in connection with any construction of the Act or any part thereof.~~]

[~~1A. MISCELLANEOUS PROVISIONS~~]

Sec. 171.021 [~~Art. 238-20~~]. SPECIFIC ENFORCEMENT OF AGREEMENTS TO ARBITRATE FUTURE DISPUTES. (a) [~~Sec. 1. PURPOSE.~~] The purpose of this chapter [~~Act~~] is to abrogate the common law arbitration rule prohibiting specific enforcement of executory arbitration agreements.

(b) [~~Sec. 2. VALIDITY OF ARBITRATION AGREEMENTS.~~] A written agreement or a provision in a written contract to submit to arbitration at common law any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon those grounds that exist at law or in equity for the revocation of any contract.

(c) [~~Sec. 2A. NONPROFIT CORPORATIONS; AGREEMENT TO ARBITRATE IN BYLAWS.~~] A provision in the bylaws of a nonprofit

corporation incorporated pursuant to the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) which requires the members of the corporation to arbitrate at common law any controversy thereafter arising between two or more members constitutes an irrevocable agreement by the members of the corporation to arbitrate such disputes and said agreement is valid and enforceable.

Sec. 171.022 [~~3~~]. APPLICABILITY. The provisions of this chapter [~~Act~~] apply only to the arbitration of controversies between members of associations or corporations which are exempt from the payment of federal income taxes pursuant to Section 501(c) of the U.S. Internal Revenue Code or which are incorporated pursuant to the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Sec. 171.023 [~~4~~]. SAVING CLAUSE. (a) This chapter [~~Act~~] is cumulative of and supplemental to any other laws and parts of law relating to common law arbitration and, except as specifically provided, does not abrogate or repeal those other laws or parts of law.

(b) This chapter [~~Act~~] does not alter or affect any other provision of this title [~~Title 10, Revised Statutes (Article 224 et seq.),~~] or any other statutory arbitration rules.

CHAPTER 172 [~~3~~]. ARBITRATION AND CONCILIATION OF INTERNATIONAL COMMERCIAL DISPUTES

SUBCHAPTER [~~SUBDIVISION~~] A. APPLICATION AND INTERPRETATION

Sec. 172.001 [~~Art. 249-1~~]. SCOPE OF APPLICATION. (a) [~~Sec. 1.~~] This chapter [~~part~~] applies to international commercial arbitration and conciliation, subject to any agreement that is in force between the United States and another state or states.

(b) [~~Sec. 2.~~] This chapter [~~part~~], except Sections 172.052 and 172.053 [~~Articles 249-8 and 249-9, Revised Statutes~~], applies only to arbitration or conciliation in this state.

(c) [~~Sec. 3.~~] An arbitration or conciliation agreement is international if:

(1) the parties to the agreement have their places of business in different states when the agreement is concluded;

(2) one or more of the following places is situated outside the states in which the parties have their places of business:

(A) the place of arbitration or conciliation determined pursuant to the arbitration or conciliation agreement;

(B) any place where a substantial part of the obligations of the commercial relationship is to be performed; or

(C) the place with which the subject matter of the dispute is most closely connected;

(3) the parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to commercial interests in more than one state; or

(4) the arbitration or conciliation agreement arises out of a legal relationship, whether or not contractual, that has another reasonable relation with more than one state.

(d) [~~Sec. 4.~~] For the purposes of Subsection (c) [~~Section 3 of this article~~], if a party has more than one place of business, the party's place

of business is considered to be the place that has the closest relationship to the arbitration or conciliation agreement, and if a party does not have a place of business, the party's place of business is considered to be the party's habitual residence.

(e) [~~Sec. 5.~~] For the purposes of Subsection (c) [~~Section 3 of this article~~], the states of the United States and the District of Columbia are considered one state.

(f) [~~Sec. 6.~~] An arbitration or conciliation agreement is commercial if it arises out of a relationship of a commercial nature, including but not limited to:

(1) a transaction for the supply or exchange of goods or services;

(2) a distribution agreement;

(3) a commercial representation or agency;

(4) an exploitation agreement or concession;

(5) a joint venture or other related form of industrial or business cooperation;

(6) the carriage of goods or passengers by air, sea, rail, or road;

(7) a relationship involving construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, banking, professional services, or intellectual or industrial property, including trademarks, patents, copyrights, and software programs; or

(8) the transfer of data or technology.

(g) [~~Sec. 7.~~] If a written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a controversy thereafter arising between the parties qualifies for arbitration pursuant to this section [~~article~~], that written agreement or provision shall be valid, enforceable and irrevocable, save on such grounds as exist at law or in equity for the revocation of any contract.

(h) [~~Sec. 8.~~] This chapter [~~part~~] does not affect any other state law under which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than this chapter [~~part~~], except that this chapter [~~part~~] supersedes Sections 171.002 [~~Articles 225~~] through 171.010 [~~233, Revised Statutes,~~] with respect to international commercial arbitration and conciliation. However, this chapter [~~part~~] does not supersede Section 171.001 or Sections 171.011 through 171.020 [~~Article 224 or Articles 234 through 238-6, Revised Statutes~~].

Sec. 172.002 [~~Art. 249-2~~]. INTERPRETATION. (a) [~~Sec. 1.~~] In this chapter [~~part~~]:

(1) "Arbitral award" means any decision of an arbitral tribunal on the substance of a dispute submitted to it and includes an interim, interlocutory, or partial award.

(2) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

(3) "Arbitration" includes any arbitration whether or not administered by a permanent arbitral institution.

(4) "Conciliation" includes any conciliation whether or not administered by a permanent conciliation institution.

(5) "District court" means the district court in the county in this state selected pursuant to Section 172.006 [~~Article 249-6, Revised Statutes~~].

(6) "Party" means a party to an arbitration or conciliation agreement.

(b) [~~Sec. 2.~~] If this chapter [~~part~~], other than Section 172.251 [~~Article 249-28, Revised Statutes~~], allows the parties to determine a certain issue, the parties may authorize a third party, including an institution, to make that determination.

(c) [~~Sec. 3.~~] An agreement of the parties under this chapter [~~part~~] includes any arbitration or conciliation rules referred to by that agreement.

(d) [~~Sec. 4.~~] In this chapter [~~part~~], other than in Section 172.208(a) or 172.255(b)(1) [~~1 of Article 249-25, Revised Statutes, or Subdivision (1) of Section 2 of Article 249-32, Revised Statutes~~], a reference to a claim includes a counterclaim, and a reference to a defense includes a defense to a counterclaim.

Sec. 172.003 [~~Art. 249-3~~]. RECEIPT OF WRITTEN COMMUNICATIONS. (a) [~~Sec. 1.~~] Unless otherwise agreed by the parties, a written communication is considered received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, habitual residence, or mailing address, and the communication is considered received on the day it is delivered.

(b) [~~Sec. 2.~~] If none of the places referred to in Subsection (a) [~~Section 1~~] can be found after a reasonable inquiry, a written communication is considered received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered mail or by other means that provides a record of the attempt to deliver it.

(c) [~~Sec. 3.~~] This section [~~article~~] does not apply to a written communication relating to a court proceeding.

Sec. 172.004 [~~Art. 249-4~~]. WAIVER OF RIGHT TO OBJECT. (a) [~~Sec. 1.~~] A party who knows that a provision of this chapter [~~part~~] or a requirement under the arbitration agreement has not been complied with but proceeds with the arbitration without stating an objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period, is considered to have waived the right to object.

(b) Subsection (a) [~~Sec. 2. Section 1 of this article~~] applies only to a provision of this chapter [~~part~~] as to which the parties may otherwise agree.

Sec. 172.005 [~~Art. 249-5~~]. EXTENT OF JUDICIAL INTERVENTION. A court may not intervene in a matter governed by this chapter [~~part~~] except as provided by this chapter [~~part~~] or applicable federal law.

Sec. 172.006 [~~Art. 249-6~~]. VENUE AND JURISDICTION OF COURTS. The functions referred to in Sections 172.102(d)-(f), 172.104(d), 172.105(b), and 172.151(f) [~~Sections 4, 5, and 6 of Article 249-11, Revised Statutes, Section 4 of Article 249-13, Revised Statutes, Section 2 of Article 249-14, Revised Statutes, and Section 6 of~~

~~Article 249-16, Revised Statutes,~~] shall be performed by the district court of the county in which the place of arbitration is located. The functions referred to in Section 172.210 [~~Article 249-27, Revised Statutes,~~] shall be performed by the district court selected as provided by Section 171.012 [~~Article 235, Revised Statutes~~]. The functions referred to in Section 172.052 [~~Article 249-8, Revised Statutes,~~] shall be performed by the court in which the judicial proceedings are pending. The functions referred to in Section 172.053 [~~Article 249-9, Revised Statutes,~~] shall be performed by the court having jurisdiction over the measures described by that section [~~article~~].

[Sections 172.007-172.050 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] B. ARBITRATION AGREEMENTS AND JUDICIAL MEASURES IN AID OF ARBITRATION

Sec. 172.051 [~~Art. 249-7~~]. ARBITRATION AGREEMENT. (a) [~~Sec. 1.~~] An arbitration agreement is an agreement to submit to arbitration disputes that have arisen or may arise between the parties concerning a defined legal relationship, whether or not contractual. An arbitration agreement may be an arbitration clause in a contract or a separate agreement.

(b) [~~Sec. 2.~~] An arbitration agreement must be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams, or other means of telecommunication that provide a record of the agreement or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is sufficient to make that clause part of the contract.

Sec. 172.052 [~~Art. 249-8~~]. STAY OF PROCEEDINGS. (a) [~~Sec. 1.~~] When a party to an international commercial arbitration agreement commences judicial proceedings seeking relief with respect to a matter covered by the agreement, the court shall, if a party requests not later than the time the party submits the party's first statement on the substance of the dispute, stay the proceedings and refer the parties to arbitration, unless it finds that the agreement is void, inoperable, or incapable of being performed.

(b) [~~Sec. 2.~~] Arbitral proceedings may begin or continue, and an award may be made, while an action described in Subsection (a) [~~Section 1 of this article~~] is pending before the court.

Sec. 172.053 [~~Art. 249-9~~]. INTERIM MEASURES. (a) [~~Sec. 1.~~] A party to an arbitration agreement may request an interim measure of protection from a district court before or during arbitral proceedings.

(b) [~~Sec. 2.~~] A party to an arbitration governed by this chapter [~~part~~] may request from the district court enforcement of an order of an arbitral tribunal granting an interim measure of protection under Section 172.152 [~~Article 249-17, Revised Statutes~~]. Enforcement shall be granted as provided by the law applicable to the type of interim relief requested.

(c) [~~Sec. 3.~~] In connection with a pending arbitration, the court may:

(1) order an attachment issued to assure that the award to which the applicant may be entitled is not rendered ineffectual by the dissipation of party assets;

(2) grant a preliminary injunction to protect trade secrets or to conserve goods that are the subject matter of the arbitral dispute; or

(3) take other appropriate action.

(d) [~~Sec. 4.~~] In considering a request for interim relief, the court shall give preclusive effect to all findings of fact of the arbitral tribunal in the proceeding, including the probable validity of the claim that is the subject of the order for interim relief that the arbitral tribunal has granted, if the interim order is consistent with public policy.

(e) [~~Sec. 5.~~] If the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the arbitral tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction under applicable law, the application for interim measures of relief shall be denied.

[Sections 172.054-172.100 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] C. COMPOSITION OF ARBITRAL TRIBUNALS

Sec. 172.101 [~~Art. 249-10~~]. NUMBER OF ARBITRATORS. There shall be one arbitrator unless the parties agree on a greater number of arbitrators.

Sec. 172.102 [~~Art. 249-11~~]. APPOINTMENT OF ARBITRATORS. (a) [~~Sec. 1.~~] A person of any nationality may be an arbitrator.

(b) [~~Sec. 2.~~] Subject to Subsections (f)-(h) [~~Sections 6, 7, and 8 of this article~~], the parties may agree on a procedure for appointing the arbitral tribunal.

(c) [~~Sec. 3.~~] If an agreement is not made under Subsection (b) [~~Section 2 of this article~~], in an arbitration with three arbitrators and two parties, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator.

(d) [~~Sec. 4.~~] If the appointment procedure in Subsection (c) [~~Section 3 of this article~~] applies and a party fails to appoint an arbitrator within 30 days after the date of receipt of a request to do so from the other party or the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the date of their appointment, the appointment shall be made, on request of a party, by the district court.

(e) [~~Sec. 5.~~] If an agreement is not made under Subsection (b) [~~Section 2 of this article~~] in an arbitration with a sole arbitrator and the parties fail to agree on the arbitrator, the appointment shall be made, on request of a party, by the district court.

(f) [~~Sec. 6.~~] The district court, on request of a party, may take the necessary measures unless the agreement on the appointment procedure provides other means for securing the appointment, if under an appointment procedure agreed to by the parties:

(1) a party fails to act as required under that procedure;

(2) the parties or two appointed arbitrators fail to reach an agreement expected of them under that procedure; or

(3) a third party, including an institution, fails to perform a function assigned to it under that procedure.

(g) [~~Sec. 7.~~] A decision of the district court under Subsection (d), (e), or (f) [~~Section 4, 5, or 6 of this article~~] is final and not subject to appeal.

(h) [~~Sec. 8.~~] The district court, in appointing an arbitrator, shall consider:

(1) any qualifications required of the arbitrator by the agreement of the parties;

(2) other considerations making more likely the appointment of an independent and impartial arbitrator; and

(3) in the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

Sec. 172.103 [~~Art. 249-12~~]. GROUNDS FOR CHALLENGE. (a) [~~Sec. 1.~~] Except as otherwise provided by this chapter [~~part~~], a person who has been contacted in connection with the person's possible appointment or designation as an arbitrator or conciliator or who has been appointed or designated shall, within 21 days after the date of the contact, appointment, or designation, disclose to the parties any information that might cause the person's impartiality or independence to be questioned, including but not limited to whether:

(1) the person has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) the person has served as a lawyer in the matter in controversy, is or has been associated with another who has participated in the matter during the association, or has been a material witness concerning the matter;

(3) the person has served as an arbitrator or conciliator in another proceeding involving one or more of the parties to the proceeding;

(4) the person, individually or as a fiduciary, or the person's spouse or minor child residing in the person's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding;

(5) the person, the person's spouse, a person within the third degree of relationship to either of them, or the spouse of such a person:

(A) is or has been a party to the proceeding or an officer, director, or trustee of a party;

(B) is acting or has acted as a lawyer in the proceeding;

(C) is known to have an interest that could be substantially affected by the outcome of the proceeding; or

(D) is likely to be a material witness in the proceeding; or

(6) the person has a close personal or professional relationship with a person who:

(A) is or has been a party to the proceeding or an officer, director, or trustee of a party;

(B) is acting or has acted as a lawyer or representative in the proceeding;

(C) is or expects to be nominated as an arbitrator or conciliator in the proceeding;

(D) is known to have an interest that could be substantially affected by the outcome of the proceeding; or

(E) is likely to be a material witness in the proceeding.

(b) [~~Sec. 2.~~] The disclosure under Subsection (a) [~~Section 1 of this article~~] may not be waived by the parties with respect to persons serving as the sole arbitrator or sole conciliator or as the chief or prevailing arbitrator or conciliator. The parties may otherwise agree to waive the disclosure.

(c) [~~Sec. 3.~~] After appointment and throughout the arbitration or conciliation proceedings, an arbitrator or conciliator without delay shall disclose to the parties any circumstance described by Subsection (a) [~~Section 1~~] that was not previously disclosed.

(d) [~~Sec. 4.~~] Unless otherwise agreed by the parties or provided by the rules governing the arbitration, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, independence, or possession of qualifications on which the parties have agreed.

(e) [~~Sec. 5.~~] A party may challenge an arbitrator appointed by the party or in whose appointment the party has participated only for reasons of which the party becomes aware after the appointment has been made.

Sec. 172.104 [~~Art. 249-13~~]. CHALLENGE PROCEDURE. (a) [~~Sec. 1.~~] The parties may agree on a procedure for challenging an arbitrator, and the decision reached as provided by that procedure is final.

(b) [~~Sec. 2.~~] If there is not an agreement under Subsection (a) [~~Section 1 of this article~~], a party challenging an arbitrator, within 15 days after the date the party becomes aware of the constitution of the arbitral tribunal or of any circumstances referred to in Sections 172.103(d) and (e) [~~Sections 4 and 5 of Article 249-12, Revised Statutes~~], whichever is later, shall send a written statement of the reasons for the challenge to the arbitral tribunal.

(c) [~~Sec. 3.~~] Unless the arbitrator challenged under Subsection (b) [~~Section 2 of this article~~] withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(d) [~~Sec. 4.~~] If a challenge following the procedure under Subsections (b) and (c) [~~Sections 2 and 3 of this article~~] is unsuccessful, the challenging party, within 30 days after the date the party receives notice of the decision rejecting the challenge, may request the district court to decide on the challenge. If a challenge is based on grounds set forth in Section 172.103(d) [~~Section 4 of Article 249-12, Revised Statutes~~], and the district court determines that the facts support a finding that the grounds fairly exist, the challenge shall be sustained.

(e) [~~Sec. 5.~~] The decision of the district court under Subsection (d) [~~Section 4 of this article~~] is final and not subject to appeal.

(f) [~~Sec. 6.~~] While a request under Subsection (d) [~~Section 4 of this article~~] is pending, the arbitral tribunal, including the challenged arbitrator, may continue the proceedings and make an award.

Sec. 172.105 [~~Art. 249-14~~]. FAILURE OR IMPOSSIBILITY TO ACT. (a) [~~Sec. 1.~~] The mandate of an arbitrator terminates if the arbitrator becomes unable to perform the arbitrator's functions or for other reasons fails to act without undue delay and the arbitrator withdraws from office or the parties agree to the termination.

(b) [~~Sec. 2.~~] If a controversy remains concerning a ground referred to in Subsection (a) [~~Section 1 of this article~~], a party may request the district court to decide on the termination of the arbitrator's mandate. The decision of the district court is not subject to appeal.

(c) [~~Sec. 3.~~] If, under this section [~~article~~] or Section 172.104(c) [~~Section 3 of Article 249-13, Revised Statutes~~], an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section [~~article~~] or Sections 172.103(d) and (e) [~~Sections 4 and 5 of Article 249-12, Revised Statutes~~].

Sec. 172.106 [~~Art. 249-15~~]. TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR. (a) [~~Sec. 1.~~] In addition to the circumstances referred to under Sections 172.104 and 172.105 [~~Articles 249-13 and 249-14, Revised Statutes~~], the mandate of an arbitrator terminates on withdrawal from office for any reason or when the parties agree.

(b) [~~Sec. 2.~~] When the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(c) [~~Sec. 3.~~] Unless otherwise agreed by the parties:

(1) if the sole or presiding arbitrator is replaced, any hearings previously held shall be repeated; and

(2) if an arbitrator other than the sole or presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(d) [~~Sec. 4.~~] Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section [~~article~~] is not invalid because there has been a change in the composition of the arbitral tribunal.

[Sections 172.107-172.150 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] D. JURISDICTION OF ARBITRAL TRIBUNALS

Sec. 172.151 [~~Art. 249-16~~]. COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION. (a) [~~Sec. 1.~~] The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is void does not make the arbitration clause invalid.

(b) [~~Sec. 2.~~] A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea because the party has appointed or participated in the appointment of an arbitrator.

(c) [~~Sec. 3.~~] A plea that the arbitral tribunal is exceeding the scope of its authority must be raised when the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(d) [~~Sec. 4.~~] The arbitral tribunal, in a situation referred to in Subsection (b) or (c) [~~Section 2 or 3 of this article~~], may admit a later plea if it considers the delay justified.

(e) [~~Sec. 5.~~] The arbitral tribunal may rule on a plea referred to in Subsection (b), (c), or (d) [~~Section 2, 3, or 4 of this article~~] as a preliminary question or in an award on the merits.

(f) [~~Sec. 6.~~] If the arbitral tribunal rules as a preliminary question that it has jurisdiction, a party waives objection to the ruling unless the party, within 30 days after the date the party receives notice of that ruling, requests the district court to decide the matter. The decision of the district court is not subject to appeal.

(g) [~~Sec. 7.~~] While a request under Subsection (f) [~~Section 6 of this article~~] is pending before the district court, the arbitral tribunal may continue the arbitral proceedings and make an award.

Sec. 172.152 [~~Art. 249-17~~]. INTERIM MEASURES ORDERED BY ARBITRAL TRIBUNAL. (a) [~~Sec. 1.~~] Unless otherwise agreed by the parties, the arbitral tribunal, at the request of a party, may order a party to take an interim measure of protection that the arbitral tribunal considers necessary concerning the subject matter of the dispute.

(b) [~~Sec. 2.~~] The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under Subsection (a) [~~Section 1 of this article~~].

[Sections 172.153-172.200 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] E. MANNER AND CONDUCT OF ARBITRATION

Sec. 172.201 [~~Art. 249-18~~]. EQUAL TREATMENT OF PARTIES. The parties shall be treated with equality and each party shall be given a full opportunity to present the party's case.

Sec. 172.202 [~~Art. 249-19~~]. DETERMINATION OF RULES OF PROCEDURE. (a) [~~Sec. 1.~~] Subject to this chapter [~~part~~], the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) [~~Sec. 2.~~] If an agreement is not made under Subsection (a) [~~Section 1 of this article~~], the arbitral tribunal, subject to this chapter [~~part~~], may conduct the arbitration in the manner it considers appropriate.

(c) [~~Sec. 3.~~] The power of the arbitral tribunal under Subsection (b) [~~Section 2 of this article~~] includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

Sec. 172.203 [~~Art. 249-20~~]. PLACE OF ARBITRATION. (a) [~~Sec. 1.~~] The parties may agree on the place of arbitration.

(b) [~~Sec. 2.~~] If the parties do not agree under Subsection (a) [~~Section 1 of this article~~], the place of arbitration shall be determined by the arbitral tribunal having regard for the circumstances of the case, including the convenience of the parties.

(c) [~~Sec. 3.~~] Notwithstanding Subsections (a) and (b) [~~Sections 1 and 2 of this article~~], the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of documents, goods, or other property.

Sec. 172.204 [~~Art. 249-21~~]. COMMENCEMENT OF ARBITRAL PROCEEDINGS. Unless otherwise agreed by the parties, the arbitral proceedings begin on the date on which a request for the dispute to be referred to arbitration is received by the respondent.

Sec. 172.205 [~~Art. 249-22~~]. LANGUAGE. (a) [~~Sec. 1.~~] The parties may agree on the language or languages to be used in the arbitral proceedings.

(b) [~~Sec. 2.~~] If the parties do not agree under Subsection (a) [~~Section 1 of this article~~], the arbitral tribunal shall determine the language or languages to be used in the proceedings.

(c) [~~Sec. 3.~~] The agreement or determination, unless it provides otherwise, applies to written statements by a party, hearings, and awards, decisions, or other communications by the arbitral tribunal.

(d) [~~Sec. 4.~~] The arbitral tribunal may order that documentary evidence be accompanied by a translation into the language or languages agreed on by the parties or determined by the arbitral tribunal.

Sec. 172.206 [~~Art. 249-23~~]. STATEMENTS OF CLAIM AND DEFENSE. (a) [~~Sec. 1.~~] Within the period agreed on by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting the claim, the points at issue, and the relief or remedy sought, and the respondent shall state the defense, unless the parties have otherwise agreed as to the required elements of those statements.

(b) [~~Sec. 2.~~] A party may submit with the party's statement documents the party considers relevant or may add a reference to the documents or other evidence the party will submit.

(c) [~~Sec. 3.~~] Unless otherwise agreed by the parties, a party may amend or supplement a claim or defense during the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Sec. 172.207 [~~Art. 249-24~~]. HEARINGS AND WRITTEN PROCEEDINGS. (a) [~~Sec. 1.~~] Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceedings are to be conducted on the basis of documents and other materials.

(b) [~~Sec. 2.~~] Unless the parties have agreed that oral hearings are not to be held, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings on request of a party.

(c) [~~Sec. 3.~~] The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods, or other property.

(d) [~~Sec. 4.~~] All statements, documents, or other information supplied to or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(e) [~~Sec. 5.~~] Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera.

Sec. 172.208 [~~Art. 249-25~~]. DEFAULT OF PARTY. (a) [~~Sec. 1.~~] Unless otherwise agreed by the parties, if the claimant without showing sufficient cause fails to communicate the statement of claim as provided by Sections 172.206(a) and (b) [~~1 and 2 of Article 249-23, Revised Statutes~~], the arbitral tribunal shall terminate the proceedings.

(b) [~~Sec. 2.~~] Unless otherwise agreed by the parties, if the respondent without showing sufficient cause fails to communicate the statement of defense as provided by Sections 172.206(a) and (b) [~~1 and 2 of Article 249-23, Revised Statutes~~], the arbitral tribunal shall continue the proceedings without treating that failure as an admission of the claimant's allegations.

(c) [~~Sec. 3.~~] Unless otherwise agreed by the parties, if a party without showing sufficient cause fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award based on the evidence before it.

Sec. 172.209 [~~Art. 249-26~~]. EXPERT APPOINTED BY ARBITRAL TRIBUNAL. (a) [~~Sec. 1.~~] Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal and require a party to give the expert relevant information or to produce or provide access to relevant documents, goods, or other property.

(b) [~~Sec. 2.~~] Unless otherwise agreed by the parties, if a party requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in an oral hearing at which the parties have the opportunity to question the expert and present expert witnesses on the points at issue.

Sec. 172.210 [~~Art. 249-27~~]. COURT ASSISTANCE IN TAKING EVIDENCE AND CONSOLIDATING ARBITRATIONS. (a) [~~Sec. 1.~~] The arbitral tribunal or a party with the approval of the tribunal may request assistance from the district court in taking evidence, and the court may provide the assistance according to its rules on taking evidence. A subpoena may be issued as provided by Section 171.007(c) [~~C of Article 230, Revised Statutes~~], in which case the witness compensation provisions of Section 171.007(d) [~~D of that article~~] apply.

(b) [~~Sec. 2.~~] If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the district court, on application by one party with the consent of all the other parties to those arbitration agreements, may:

(1) order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) if all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by Section 172.102(h) [~~8 of Article 249-11, Revised Statutes~~]; and

(3) if all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

(c) [~~Sec. 3.~~] This section [~~article~~] may not be construed to prevent the parties to two or more arbitrations from agreeing to consolidate those arbitrations and taking any steps that are necessary to effect that consolidation.

[Sections 172.211-172.250 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] F. MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

Sec. 172.251 [~~Art. 249-28~~]. RULES APPLICABLE TO SUBSTANCE OF DISPUTE. (a) [~~Sec. 1.~~] The arbitral tribunal shall decide the dispute according to the rules of law designated by the parties as applicable to the substance of the dispute.

(b) [~~Sec. 2.~~] Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

(c) [~~Sec. 3.~~] If the parties do not make a designation under Subsection (a) [~~Section 1 of this article~~], the arbitral tribunal shall apply the law determined by the conflict of laws rules that it considers applicable.

(d) [~~Sec. 4.~~] The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, if the parties have expressly authorized it to do so.

(e) [~~Sec. 5.~~] In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Sec. 172.252 [~~Art. 249-29~~]. DECISIONMAKING BY PANEL OF ARBITRATORS. Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all of its members. Notwithstanding this section [~~article~~], if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

Sec. 172.253 [~~Art. 249-30~~]. SETTLEMENT. (a) [~~Sec. 1.~~] An arbitral tribunal may encourage settlement of the dispute and, with the agreement of the parties, may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

(b) [~~Sec. 2.~~] If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an award on agreed terms.

(c) [~~Sec. 3.~~] An award on agreed terms shall be made as provided by Section 172.254 [~~Article 249-31, Revised Statutes,~~] and shall state that it is an arbitral award.

(d) [~~Sec. 4.~~] An award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Sec. 172.254 [~~Art. 249-31~~]. FORM AND CONTENT OF ARBITRAL AWARD. (a) [~~Sec. 1.~~] An arbitral award must be in writing and signed by the members of the arbitral tribunal.

(b) [~~Sec. 2.~~] For the purposes of Subsection (a) [~~Section 1 of this article~~], in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal are sufficient if the reason for any omitted signature is stated.

(c) [~~Sec. 3.~~] The award must state the reasons on which it is based, unless the parties have agreed that no reasons are to be given, or the award is an award on agreed terms under Section 172.253 [~~Article 249-30, Revised Statutes~~].

(d) [~~Sec. 4.~~] The award must state its date and the place of arbitration as determined under Section 172.203 [~~Article 249-20, Revised Statutes~~], and the award is considered to have been made at that place.

(e) [~~Sec. 5.~~] After the award is made, a signed copy shall be delivered to each party.

(f) [~~Sec. 6.~~] The arbitral tribunal may, at any time during the proceedings, make an interim award on any matter with respect to which it may make a final award. The interim award may be enforced in the same manner as a final award.

(g) [~~Sec. 7.~~] Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(h) [~~Sec. 8. (a)~~] Unless otherwise agreed by the parties, the costs of an arbitration are at the discretion of the arbitral tribunal.

(i) [~~(b)~~] In making an order for costs, the arbitral tribunal may include as costs:

(1) the fees and expenses of the arbitrators and expert witnesses;

(2) legal fees and expenses;

(3) administration fees of the institution supervising the arbitration, if any; and

(4) any other expenses incurred in connection with the arbitral proceedings.

(j) [~~(c)~~] In making an order for costs, the arbitral tribunal may specify:

(1) the party entitled to costs;

(2) the party who shall pay the costs;

(3) the amount of costs or method of determining that amount; and

(4) the manner in which the costs shall be paid.

Sec. 172.255 [~~Art. 249-32~~]. TERMINATION OF PROCEEDINGS. (a) [~~Sec. 1.~~] The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under Subsection (b) [~~Section 2 of this article~~]. The award is final on the expiration of the applicable period in Section 172.256 [~~Article 249-33, Revised Statutes~~].

(b) [~~Sec. 2.~~] The arbitral tribunal shall issue an order for the termination of the arbitral proceedings if:

(1) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(2) the parties agree on the termination of the proceedings; or

(3) the arbitral tribunal finds that continuation with the proceedings has for any other reason become unnecessary or impossible.

(c) [~~Sec. 3.~~] Subject to Section 172.256 [~~Article 249-33, Revised Statutes~~], the mandate of the arbitral tribunal ends with the termination of the arbitral proceedings.

Sec. 172.256 [~~Art. 249-33~~]. CORRECTION AND INTERPRETATION OF AWARDS AND ADDITIONAL AWARDS. (a) [~~Sec. 1.~~] Within 30 days after the date of receipt of the arbitral award, unless another period has been agreed to by the parties:

(1) a party may request the arbitral tribunal to correct in the award any computation, clerical, or typographical errors or other errors of a similar nature; and

(2) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(b) [~~Sec. 2.~~] If the arbitral tribunal considers any request made under Section 1 of this article to be justified, it shall make the correction or give the interpretation within 30 days after the date of receipt of the request, and the interpretation shall become part of the award.

(c) [~~Sec. 3.~~] The arbitral tribunal may correct an error of the type referred to in Subsection (a)(1) [~~Subdivision (1) of Section 1 of this article~~] on its own initiative within 30 days after the date of the award.

(d) [~~Sec. 4.~~] Unless otherwise agreed by the parties, a party, within 30 days after the date of receipt of the award, may request the arbitral tribunal to make an additional award for any claim presented in the arbitral proceedings but omitted from the award.

(e) [~~Sec. 5.~~] If the arbitral tribunal considers a request made under Subsection (d) [~~Section 4 of this article~~] to be justified, it shall make the additional award within 60 days after the date of receipt of the request.

(f) [~~Sec. 6.~~] The arbitral tribunal may extend, if necessary, the period within which it may make a correction, give an interpretation, or make an additional award under Subsection (b) or (e) [~~Section 2 or 5 of this article~~].

(g) Section 172.254 [~~Sec. 7. Article 249-31, Revised Statutes,~~] applies to a correction or interpretation of the award or to an additional award made under this section [~~article~~].

[Sections 172.257-172.300 reserved for expansion]

SUBCHAPTER [~~SUBDIVISION~~] G. PROVISIONS RELATING SOLELY TO CONCILIATION

Sec. 172.301 [~~Art. 249-34~~]. APPOINTMENT OF CONCILIATORS. (a) [~~Sec. 1.~~] It is the policy of this state to encourage parties to an international commercial agreement or transaction that qualifies for arbitration or conciliation under Section 172.001(c) [~~3 of Article 249-1,~~

~~Revised Statutes;~~] to resolve disputes arising from those agreements or transactions through conciliation. The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliator or conciliators who shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(b) [~~Sec. 2.~~] A conciliator shall be guided by principles of objectivity, fairness, and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) [~~Sec. 3.~~] The conciliator or conciliators may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a speedy settlement of the dispute. Except as otherwise provided by this chapter [~~part~~], other provisions of the law of this state governing procedural matters do not apply to conciliation proceedings brought under this chapter [~~part~~].

Sec. 172.302 [~~Art. 249-35~~]. REPRESENTATION AND ASSISTANCE. The parties may appear in person or be represented or assisted by any person of their choice.

Sec. 172.303 [~~Art. 249-36~~]. REPORT OF CONCILIATORS. (a) [~~Sec. 1.~~] At any time during the proceedings, the conciliator or conciliators may prepare a draft conciliation settlement which may include the assessment and apportionment of costs between the parties and send copies to the parties, specifying the time within which they must signify their approval.

(b) [~~Sec. 2.~~] A party may not be required to accept a settlement proposed by the conciliator or conciliators.

Sec. 172.304 [~~Art. 24937~~]. CONFIDENTIALITY. [~~Sec. 1.~~] (a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible in evidence, and disclosure of that evidence may not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given. However, this subsection does not limit the admissibility of evidence if all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case without prejudice.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation or a copy of the document is not admissible in evidence, and disclosure of the document may not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given.

Sec. 172.305 [~~Art. 249-38~~]. STAY OF ARBITRATION AND RESORT TO OTHER PROCEEDINGS. (a) [~~Sec. 1.~~] The agreement of the parties to submit a dispute to conciliation is considered an agreement between or

among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) [~~Sec. 2.~~] All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this chapter [~~part~~] as to all parties to the conciliation proceedings until the 10th day following the date of termination of the proceedings. For purposes of this section [~~article~~], conciliation proceedings are considered to have begun when a party has requested conciliation of a particular dispute or disputes and the other party or parties agree to participate in the conciliation proceedings.

Sec. 172.306 [~~Art. 249-39~~]. TERMINATION. (a) [~~Sec. 1.~~] A conciliation proceeding may be terminated as to all parties by:

(1) a written declaration of the conciliator or conciliators, after consultation with the parties, that further efforts at conciliation are no longer justified, on the date of the declaration;

(2) a written declaration of the parties addressed to the conciliator or conciliators that the conciliation proceedings are terminated, on the date of the declaration; or

(3) the signing of a settlement agreement by all of the parties, on the date of the agreement.

(b) [~~Sec. 2.~~] The conciliation proceedings may be terminated as to particular parties by:

(1) a written declaration of a party to the other party or parties and the conciliator or conciliators, if appointed, that the conciliation proceedings are to be terminated as to that party, on the date of the declaration; or

(2) the signing of a settlement agreement by some of the parties, on the date of the agreement.

(c) [~~Sec. 3.~~] A person who has served as conciliator may not be appointed as an arbitrator for or take part in any arbitral or judicial proceedings in the same dispute unless all parties consent to the participation or the rules adopted for conciliation or arbitration provide otherwise.

(d) [~~Sec. 4.~~] A party by submitting to conciliation is not considered to have waived any rights or remedies that party would have had if conciliation had not been initiated, other than those set forth in any settlement agreement resulting from the conciliation.

Sec. 172.307 [~~Art. 249-40~~]. ENFORCEABILITY OF DECREE. If the conciliation settles the dispute and the result of the conciliation is in writing and signed by the conciliator or conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal and shall have the same force and effect as a final award in arbitration.

Sec. 172.308 [~~Art. 249-41~~]. COSTS. (a) [~~Sec. 1.~~] On termination of the conciliation proceedings, the conciliator shall set the costs of the conciliation and give written notice of the costs to the parties. For the purposes of this section [~~article~~], "costs" includes only:

(1) a reasonable fee to be paid to the conciliator or conciliators;

(2) travel and other reasonable expenses of the conciliator or conciliators;

(3) travel and other reasonable expenses of witnesses requested by the conciliator or conciliators with the consent of the parties;

(4) the cost of any expert advice requested by the conciliator or conciliators with the consent of the parties; and

(5) the cost of any court.

(b) [~~Sec. 2.~~] Costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Sec. 172.309 [~~Art. 249-42~~]. EFFECT ON JURISDICTION. The request for conciliation, the consent to participate in the conciliation proceedings, the participation in the proceedings, or the entering into a conciliation agreement or settlement does not constitute consent to the jurisdiction of any court in this state if conciliation fails.

Sec. 172.310 [~~Art. 249-43~~]. IMMUNITY OF CONCILIATORS AND PARTIES. (a) [~~Sec. 1.~~] A conciliator, party, or representative of a conciliator or party, while present in this state for the purpose of arranging for or participating in conciliation under this chapter [~~part~~], is not subject to service of process on any civil matter related to the conciliation.

(b) [~~Sec. 2.~~] A person who serves as a conciliator may not be held liable in an action for damages resulting from any act or omission in the performance of the person's role as a conciliator in any proceeding subject to this chapter [~~part~~].

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1439** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 788

Senator Ratliff called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 788** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 788** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Haywood, Shapiro, Wentworth, and Cain.

SENATE BILL 1685 WITH HOUSE AMENDMENT

Senator Sibley called **S.B. 1685** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 1685** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the detection and prevention of prostate cancer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 91 to read as follows:

CHAPTER 91. PROSTATE CANCER EDUCATION PROGRAM

Sec. 91.001. FINDINGS. The legislature finds that:

(1) Prostate cancer is a major public health problem with an estimated 13,000 Texans to be diagnosed each year resulting in over 2,200 Texans dying each year;

(2) early detection through annual checkups and testing are critical to the preservation of life and health care strategies for those at risk of prostate cancer; and

(3) it is in the public interest of this state to promote public awareness of the benefits and value of the early detection, prevention, and treatment of prostate cancer.

Sec. 91.002. PROSTATE CANCER STRATEGY. In consultation with the board, the commissioner shall develop and implement a program that educates the public on the causes of prostate cancer and the factors associated with the development of prostate cancer. The program shall also publicize the value and methods of early detection and prevention, and identify the options available for treatment.

Sec. 91.003. TASK FORCE. (a) Using existing resources in developing the program created by Section 91.002, the commissioner shall appoint a task force to make recommendations on strategies for educating the public on the health benefits of the early detection, prevention, and treatment of prostate cancer.

(b) Members of the task force are not entitled to compensation, per diem, or expense reimbursement for their service on the task force.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Sibley moved to concur in the House amendment to **S.B. 1685**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2890

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2890** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2890** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Truan, Luna, Madla, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 3189

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 3189** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 3189** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Truan, Luna, Madla, and Wentworth.

SENATE RESOLUTION 1270

Senator Nixon offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 74th Legislature, Regular Session, 1995, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 550** to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement in Section 1 of the bill, in proposed Subsection (b), Article 6447i, Revised Statutes, as added by the bill. The omitted text consists of the third comma in the proposed subsection and the phrase that reads as follows:

"having a fair market value greater than $1,000,"

Explanation: This change is necessary to ensure that the bill prohibits gifts or donations from certain persons without regard to the monetary value of the gift or donation.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1241

Senator Barrientos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 74th Legislature, Regular Session, 1995, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 646** to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement in Section 1 of the bill, which amends Section 657.001(2), Government Code, and to renumber the other sections of the bill as appropriate. The omitted text reads as follows:

SECTION 1. Section 657.001(2), Government Code, is amended to read as follows:

(2) "Public entity" means a public department, commission, board, office, or agency, including:

(A) an institution of higher education, as defined by Section 61.003, Education Code;

(B) a governmental body, as defined by Chapter 551 or 552; and

(C) a public entity that receives money from the state or federal government, directly or indirectly, under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

Explanation: This change is necessary to ensure that the legislation applies only to certain public entities.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON SENATE BILL 449 DISCHARGED

On motion of Senator Montford and by unanimous consent, the Senate conferees on **S.B. 449** were discharged.

Question—Shall the Senate concur in the House amendments to **S.B. 449**?

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to **S.B. 449** by a viva voce vote.

SENATE BILL 1407 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 1407** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 1407**, engrossed, as follows:

(1) On page 3, line 19, between "those" and "physicians", insert "other health maintenance organizations or".

(2) On page 3, line 24, between "with" and "physicians", insert "other health maintenance organizations or".

(3) On page 3, line 25, after "such", insert "health maintenance organizations".

(4) On page 5, line 12, strike "or arranges for the delivery of".

(5) On page 5, line 14, strike "furnishes or arranges for" and substitute "is engaged in".

(6) On page 6, strike lines 11-16 and substitute "Except for Articles 21.07-6 and Article 21.58A, Insurance Code, [~~Notwithstanding any other law, provisions of~~] the insurance laws, including [~~law and the provisions of~~] the group hospital service corporation law, do not apply [~~shall not be applicable~~] to physicians and providers [~~the above persons, professional associations, or nonprofit corporations~~]; provided that Article 21.58A shall not apply to utilization review undertaken by a physician or provider in the ordinary course of treatment of patients by a physician or provider pursuant to a joint or delegated review agreement or agreements with a health maintenance organization on services rendered by the physician or provider.

(7) On page 6, line 23, after "arrangement" insert "within a health maintenance organization delivery network".

(8) On page 6, line 24, strike "8" and substitute "9".

(9) On page 6, line 24, through page 7, line 2, strike "if the contractual arrangement is entered into in furtherance of the delivery of health care services or medical care through a contractual arrangement with a health maintenance organization".

The amendment was read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1407** by a viva voce vote.

CONCLUSION OF MORNING CALL

The President at 4:28 p.m. announced the conclusion of morning call.

HOUSE BILL 3199 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3199, Relating to the duties of the secretary of state.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3199 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3199** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has recommitted **S.B. 1445** to conference committee.

The House has concurred in Senate amendments to **H.B. 883** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 632** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1065** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 960** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 958** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives B. Turner, Chair; Finnell, Counts, Oliveira, and Cook.

The House refused to concur in Senate amendments to **H.B. 466** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Brimer, Chair; Goodman, Talton, Nixon, and Cook.

The House has concurred in Senate amendments to **H.B. 1089** by a non-record vote.

The House has discharged the conference committee and concurred in Senate amendments to **H.B. 1091** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1243** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1379** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 1483** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Tillery, Chair; Hirschi, Glaze, Janek, and Davis.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 2085 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2085, Relating to the liability of certain private and governmental owners of agricultural land used for recreation.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2085 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2085** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE JOINT RESOLUTION 72 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 72, Proposing a constitutional amendment relating to the ad valorem taxation of open-spaced land used for wildlife management.

The resolution was read second time and was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 72 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.J.R. 72** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Bivins.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 1358 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1358, Relating to the appraisal for ad valorem tax purposes of open-space land used for wildlife management.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1358 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1358** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Bivins.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as "Present-not voting" on the final passage of the bill.

SENATE RESOLUTION ON FIRST READING

The following resolution was introduced, read first time, and referred to the committee indicated:

S.C.R. 174 by Zaffirini — Administration
Creating a special committee to designate two Poets Laureate for the State of Texas.

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read first time and referred to the committee indicated:

H.C.R. 76 to Committee on State Affairs.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate a group of 1995 graduating seniors from Martin High School in Laredo.

The Senate welcomed its guests.

SENATE RULE 11.19 SUSPENDED (Posting Rule)

On motion of Senator Sibley and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Economic

Development might meet and consider the following bills upon recess today:

H.B. 129
H.B. 222
H.B. 725
H.B. 1728
H.B. 2858
H.B. 2893
H.B. 3233

NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Harris announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 9:30 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

MOTION TO RECESS

On motion of Senator Truan, the Senate at 4:44 p.m. agreed to recess, upon the receipt of messages from the House, until 9:30 a.m. tomorrow for the Local and Uncontested Bills Calendar.

(Senator Zaffirini in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 2129** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1783** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1687** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2289** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 1662** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Hilderbran, Chair; J. Jones, Naishtat, Swinford, and Krusee.

The House refused to concur in Senate amendments to **H.B. 2256** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Shields, Chair; Smithee, Counts, G. Lewis, and Duncan.

The House refused to concur in Senate amendments to **H.B. 2294** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Yost, Chair; Walker, R. Lewis, Combs, and Puente.

The House has concurred in Senate amendments to **H.B. 2510** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 3073** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Gallego, Chair; Alonzo, Zbranek, Solis, and Willis.

The House refused to concur in Senate amendments to **H.B. 3049** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Junell, Chair; Black, Brimer, Gallego, and Ogden.

The House refused to concur in Senate amendments to **H.B. 2843** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives R. Lewis, Chair; Saunders, Counts, Yost, and Corte.

The House has concurred in Senate amendments to **H.B. 2936** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2377** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 3050** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 3193** by a record vote of 81 Ayes, 54 Nays, 5 Present-not voting.

H.C.R. 233, Instructing the enrolling clerk of the Senate to make technical corrections to **S.B. 421**.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 51

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 19, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.J.R. 51** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONTFORD	PATTERSON
BIVINS	KUBIAK
BROWN	MARCHANT
LUCIO	BLACK
TRUAN	JUNELL
On the part of the Senate	On the part of the House

A JOINT RESOLUTION

proposing a constitutional amendment relating to the use of proceeds of bonds issued for financing of farm and ranch land.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 49-f, Article III, Texas Constitution, is amended by amending Subsection (b) and by adding Subsection (g) to read as follows:

(b) Except as provided by Subsection (g) of this section, all [~~All~~] money received from the sale of the bonds shall be deposited in a fund created with the state treasurer to be known as the farm and ranch finance program fund. This fund shall be administered by the Texas Agricultural Finance Authority [~~Veterans' Land Board~~] in the manner prescribed by law.

(g) Notwithstanding Subsection (a) of this section, the proceeds of $200 million of the bonds authorized by this section may be used for the purposes provided by Section 49-i of this article and for other rural economic development programs, and the proceeds of bonds issued for those purposes under this subsection shall be deposited in the Texas agricultural fund, to be administered in the same manner that proceeds of bonds issued under Section 49-i of this article are administered.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1995. The ballot shall be printed to permit voting for or against the

proposition: "The constitutional amendment allowing the use of existing bond authority of the farm and ranch finance program to include financial assistance for the expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products."

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 14

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 14** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS	COMBS
ARMBRISTER	ALEXANDER
NELSON	BLACK
SIMS	SAUNDERS
	B. TURNER
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to protecting private real property rights from certain actions of this state or a political subdivision of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 10, Government Code, is amended by adding Chapter 2007 to read as follows:

CHAPTER 2007. GOVERNMENTAL ACTION AFFECTING PRIVATE PROPERTY RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2007.001. SHORT TITLE. This chapter may be cited as the Private Real Property Rights Preservation Act.

Sec. 2007.002. DEFINITIONS. In this chapter:

(1) "Governmental entity" means:

(A) a board, commission, council, department, or other agency in the executive branch of state government that is created by

constitution or statute, including an institution of higher education as defined by Section 61.003, Education Code; or

(B) a political subdivision of this state.

(2) "Owner" means a person with legal or equitable title to affected private real property at the time a taking occurs.

(3) "Market value" means the price a willing buyer would pay a willing seller after considering all factors in the marketplace that influence the price of private real property.

(4) "Private real property" means an interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, this state, or a political subdivision of this state.

(5) "Taking" means:

(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(B) a governmental action that:

(i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Sec. 2007.003. APPLICABILITY. (a) This chapter applies only to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;

(3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and

(4) enforcement of a governmental action listed in Subdivisions (1) through (3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

(b) This chapter does not apply to the following governmental actions:

(1) an action by a municipality except as provided by Subsection (a)(3);

(2) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;

(3) a lawful seizure of property as evidence of a crime or violation of law;

(4) an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;

(5) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(6) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;

(7) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;

(8) a formal exercise of the power of eminent domain;

(9) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

(10) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(11) an action taken by a political subdivision:

(A) to regulate construction in an area designated under law as a floodplain;

(B) to regulate on-site sewage facilities;

(C) under the political subdivisions's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(D) to prevent subsidence;

(12) the appraisal of property for purposes of ad valorem taxation;

(13) an action that:

(A) is taken in response to a real and substantial threat to public health and safety;

(B) is designed to significantly advance the health and safety purpose; and

(C) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(14) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

(c) Sections 2007.021 and 2007.022 do not apply to the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995, and that prevents the pollution of a reservoir or

an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300h-3(e)).

(d) This chapter applies to a governmental action taken by a county only if the action is taken on or after September 1, 1997.

(e) This chapter does not apply to the enforcement or implementation of Subchapter B, Chapter 61, Natural Resources Code, as it existed on September 1, 1995, or to the enforcement or implementation of any rule or similar measure that was adopted under that subchapter and was in existence on September 1, 1995.

Sec. 2007.004. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit and liability is waived and abolished to the extent of liability created by this chapter.

(b) This section does not authorize a person to execute a judgment against property of the state or a governmental entity.

Sec. 2007.005. ALTERNATIVE DISPUTE RESOLUTION. Chapter 154, Civil Practice and Remedies Code, applies to a suit filed under this chapter.

Sec. 2007.006. CUMULATIVE REMEDIES. (a) The provisions of this chapter are not exclusive. The remedies provided by this chapter are in addition to other procedures or remedies provided by law.

(b) A person may not recover under this chapter and also recover under another law or in an action at common law for the same economic loss.

[Sections 2007.007 to 2007.020 reserved for expansion]

SUBCHAPTER B. ACTION TO DETERMINE TAKING

Sec. 2007.021. SUIT AGAINST POLITICAL SUBDIVISION. (a) A private real property owner may bring suit under this subchapter to determine whether the governmental action of a political subdivision results in a taking under this chapter. A suit under this subchapter must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected private real property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.

(b) A suit under this subchapter must be filed not later than the 180th day after the date the private real property owner knew or should have known that the governmental action restricted or limited the owner's right in the private real property.

Sec. 2007.022. ADMINISTRATIVE PROCEEDING AGAINST STATE AGENCY. (a) A private real property owner may file a contested case with a state agency to determine whether a governmental action of the state agency results in a taking under this chapter.

(b) A contested case must be filed with the agency not later than the 180th day after the date the private real property owner knew or should have known that the governmental action restricted or limited the owner's right in the private real property.

(c) A contested case filed under this section is subject to Chapter 2001 except to the extent of a conflict with this subchapter.

Sec. 2007.023. ENTITLEMENT TO INVALIDATION OF GOVERNMENTAL ACTION. (a) Whether a governmental action results in a taking is a question of fact.

(b) If the trier of fact in a suit or contested case filed under this subchapter finds that the governmental action is a taking under this chapter, the private real property owner is only entitled to, and the governmental entity is only liable for, invalidation of the governmental action or the part of the governmental action resulting in the taking.

Sec. 2007.024. JUDGMENT OR FINAL DECISION OR ORDER. (a) The court's judgment in favor of a private real property owner under Section 2007.021 or a final decision or order issued under Section 2007.022 that determines that a taking has occurred shall order the governmental entity to rescind the governmental action, or the part of the governmental action resulting in the taking, as applied to the private real property owner not later than the 30th day after the date the judgment is rendered or the decision or order is issued.

(b) The judgment or final decision or order shall include a fact finding that determines the monetary damages suffered by the private real property owner as a result of the taking. The amount of damages is determined from the date of the taking.

(c) A governmental entity may elect to pay the damages as compensation to the private real property owner who prevails in a suit or contested case filed under this subchapter. Sovereign immunity to liability is waived to the extent the governmental entity elects to pay compensation under this subsection.

(d) If a governmental entity elects to pay compensation to the private real property owner:

(1) the court that rendered the judgment in the suit or the state agency that issued the final order or decision in the case shall withdraw the part of the judgment or final decision or order rescinding the governmental action; and

(2) the governmental entity shall pay to the owner the damages as determined in the judgment or final order not later than the 30th day after the date the judgment is rendered or the final decision or order is issued.

(e) If the governmental entity does not pay compensation to the private real property owner as provided by Subsection (d), the court or the state agency shall reinstate the part of the judgment or final decision or order previously withdrawn.

(f) A state agency that elects to pay compensation to the private real property owner shall pay the compensation from funds appropriated to the agency.

Sec. 2007.025. APPEAL. (a) A person aggrieved by a judgment rendered in a suit filed under Section 2007.021 may appeal as provided by law.

(b) A person who has exhausted all administrative remedies available within the state agency and is aggrieved by a final decision or order in a contested case filed under Section 2007.022 is entitled to judicial review

under Chapter 2001. Review by a court under this subsection is by trial de novo.

(c) If a private real property owner prevails in a suit or contested case filed under this subchapter and the governmental entity appeals, the court or the state agency shall enjoin the governmental entity from invoking the governmental action or the part of the governmental action resulting in the taking, pending the appeal of the suit or contested case.

Sec. 2007.026. FEES AND COSTS. (a) The court or the state agency shall award a private real property owner who prevails in a suit or contested case filed under this subchapter reasonable and necessary attorney's fees and court costs.

(b) The court or the state agency shall award a governmental entity that prevails in a suit or contested case filed under this subchapter reasonable and necessary attorney's fees and court costs.

[Sections 2007.027 to 2007.040 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS FOR PROPOSED GOVERNMENTAL ACTION

Sec. 2007.041. GUIDELINES. (a) The attorney general shall prepare guidelines to assist governmental entities in identifying and evaluating those governmental actions described in Section 2007.003(a)(1) through (3) that may result in a taking.

(b) The attorney general shall file the guidelines with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002.

(c) The attorney general shall review the guidelines at least annually and revise the guidelines as necessary to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state.

(d) A person may make comments or suggestions or provide information to the attorney general concerning the guidelines. The attorney general shall consider the comments, suggestions, and information in the annual review process required by this section.

(e) Material provided to the attorney general under Subsection (d) is public information.

Sec. 2007.042. PUBLIC NOTICE. (a) A political subdivision that proposes to engage in a governmental action described in Section 2007.003(a)(1) through (3) that may result in a taking shall provide at least 30 days' notice of its intent to engage in the proposed action by providing a reasonably specific description of the proposed action in a notice published in a newspaper of general circulation published in the county in which affected private real property is located. If a newspaper of general circulation is not published in that county, the political subdivision shall publish a notice in a newspaper of general circulation located in a county adjacent to the county in which affected private real property is located. The political subdivision shall, at a minimum, include in the notice a reasonably specific summary of the takings impact assessment that was prepared as required by this subchapter and the name

of the official of the political subdivision from whom a copy of the full assessment may be obtained.

(b) A state agency that proposes to engage in a governmental action described in Section 2007.003(a)(1) or (2) that may result in a taking shall:

(1) provide notice in the manner prescribed by Section 2001.023; and

(2) file with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002 a reasonably specific summary of the takings impact assessment that was prepared by the agency as required by this subchapter.

Sec. 2007.043. TAKINGS IMPACT ASSESSMENT. (a) A governmental entity shall prepare a written takings impact assessment of a proposed governmental action described in Section 2007.003(a)(1) through (3) that complies with the evaluation guidelines developed by the attorney general under Section 2007.041 before the governmental entity provides the public notice required under Section 2007.042.

(b) The takings impact assessment must:

(1) describe the specific purpose of the proposed action and identify:

(A) whether and how the proposed action substantially advances its stated purpose; and

(B) the burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property;

(2) determine whether engaging in the proposed governmental action will constitute a taking; and

(3) describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain:

(A) how an alternative action would further the specified purpose; and

(B) whether an alternative action would constitute a taking.

(c) A takings impact assessment prepared under this section is public information.

Sec. 2007.044. SUIT TO INVALIDATE GOVERNMENTAL ACTION. (a) A governmental action requiring a takings impact assessment is void if an assessment is not prepared. A private real property owner affected by a governmental action taken without the preparation of a takings impact assessment as required by this subchapter may bring suit for a declaration of the invalidity of the governmental action.

(b) A suit under this section must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.

(c) The court shall award a private real property owner who prevails in a suit under this section reasonable and necessary attorney's fees and court costs.

Sec. 2007.045. UPDATING OF CERTAIN ASSESSMENTS REQUIRED. A state agency that proposes to adopt a governmental action

described in Section 2007.003(a)(1) or (2) that may result in a taking as indicated by the takings impact assessment shall update the assessment if the action is not adopted before the 180th day after the date the notice is given as required by Section 2001.023.

SECTION 2. Section 2002.011, Government Code, is amended to read as follows:

Sec. 2002.011. TEXAS REGISTER. The secretary of state shall compile, index, cross-index to statute, and publish a publication to be known as the Texas Register. The register shall contain:

(1) notices of proposed rules issued and filed in the office of the secretary of state as provided by Subchapter B of Chapter 2001;

(2) the text of rules adopted and filed in the office of the secretary of state;

(3) notices of open meetings issued and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor;

(5) summaries of requests for opinions of the attorney general and of the State Ethics Advisory Commission;

(6) summaries of opinions of the attorney general and of the State Ethics Advisory Commission; [~~and~~]

(7) guidelines prepared by the attorney general under Section 2007.041;

(8) notices relating to the preparation of takings impact assessments as provided by Section 2007.043; and

(9) other information of general interest to the public of this state, including:

(A) federal legislation or regulations affecting the state or a state agency; and

(B) state agency organizational and personnel changes.

SECTION 3. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.11 to read as follows:

Sec. 23.11. GOVERNMENTAL ACTION THAT CONSTITUTES TAKING. In appraising private real property, the effect of a governmental action on the market value of private real property as determined in a suit or contested case filed under Chapter 2007, Government Code, shall be taken into consideration by the chief appraiser in determining the market value of the property.

SECTION 4. The attorney general shall file the guidelines for publication as required by Section 2007.041, Government Code, as added by this Act, not later than January 1, 1996.

SECTION 5. Before the 75th Legislature convenes, the comptroller of public accounts shall:

(1) report to the governor, lieutenant governor, speaker of the house of representatives, and attorney general regarding state agency compliance with the takings impact assessment procedures prescribed by Section 2007.043, Government Code, as added by this Act, and the costs to governmental entities associated with implementation of this Act; and

(2) make recommendations for improving the takings impact assessment process.

SECTION 6. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 1995.

(b) Sections 2007.042 and 2007.043, Government Code, as added by this Act, take effect January 1, 1996, and apply only to a governmental action described in Subdivisions (1) through (3), Subsection (a), Section 2007.003, Government Code, as added by this Act, that is first proposed to be taken on or after that date.

(c) Sections 2007.021 and 2007.022, Government Code, as added by this Act, apply to:

(1) a governmental action described in Subdivisions (1) through (3), Subsection (a), Section 2007.003, Government Code, as added by this Act, that is first proposed on or after September 1, 1995; and

(2) a governmental action described in Subdivision (4), Subsection (a), Section 2007.003, Government Code, as added by this Act, if the action is initiated after September 1, 1995.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 172

Senator Luna submitted the following Conference Committee Report:

Austin, Texas
May 25, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 172** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LUNA	PUENTE
HARRIS	T. HUNTER
WENTWORTH	SOLOMONS
WEST	UHER
CAIN	H. CUELLAR
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain records of transactions conducted under durable powers of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Durable Power of Attorney Act (Chapter XII, Texas Probate Code) is amended by adding Section 490A to read as follows:

Sec. 490A. ACCOUNTING RECORDS. (a) The attorney in fact or agent of a principal empowered to act for the principal with regard to a class of transactions under a durable power of attorney or statutory durable power of attorney shall maintain appropriate records of each transaction, including an accounting of receipts and disbursements.

(b) Within the period specified by Subsection (c) of this section, the attorney in fact or agent shall make the records available, on request, to the principal, the guardian or personal representative of the principal's estate, or any person interested in the principal's estate for inspection and review. If the attorney in fact or agent fails to comply with a request made under this subsection, the person making the request may file in a court of proper jurisdiction a petition for an order to enforce the request. After notice and hearing, the court may order the attorney in fact or agent to make the records available to the petitioner for inspection and review.

(c) The attorney in fact or agent shall maintain the records until at least the fourth anniversary of the date the durable power of attorney or statutory durable power of attorney expires or is expressly revoked by the principal.

SECTION 2. Section 490(a), Texas Probate Code, is amended to read as follows:

(a) The following form is known as a "statutory durable power of attorney." A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

When a power in substantially the form set forth in this chapter is used, third parties who rely in good faith on the acts of the agent within the scope of the power may do so without fear of liability to the principal.

The following form is not exclusive, and other forms of power of attorney may be used.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN

COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____ (insert your name and address), my social security number being _____ (insert your proper SS#), appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

_____ (A) real property transactions;
_____ (B) tangible personal property transactions;
_____ (C) stock and bond transactions;
_____ (D) commodity and option transactions;
_____ (E) banking and other financial institution transactions;
_____ (F) business operating transactions;
_____ (G) insurance and annuity transactions;
_____ (H) estate, trust, and other beneficiary transactions;
_____ (I) claims and litigation;
_____ (J) personal and family maintenance;
_____ (K) benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
_____ (L) retirement plan transactions;
_____ (M) tax matters;
_____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____
_____
_____
_____
_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____, 19____

_____
(your signature)

State of _____
County of _____
This document was acknowledged before me on _____(date) by _____
(name of principal)

_____
(signature of notarial officer)

(Seal, if any, of notary) _____
(printed name)

My commission expires:_____

NOTICE: THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT AND IS RESPONSIBLE FOR MAINTAINING APPROPRIATE RECORDS OF EACH TRANSACTION, INCLUDING AN ACCOUNTING OF RECEIPTS AND DISBURSEMENTS, UNTIL THE FOURTH ANNIVERSARY OF THE DATE THIS POWER OF ATTORNEY EXPIRES OR IS EXPRESSLY REVOKED BY THE PRINCIPAL.

SECTION 3. This Act takes effect September 1, 1995, and the change in law made by this Act applies only to a durable power of attorney or statutory durable power of attorney that is executed on or after that date. A durable power of attorney or statutory durable power of attorney that is executed before the effective date of this Act is governed by the law in effect on the date the power of attorney was executed, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 550

Senator Nixon submitted the following Conference Committee Report:

Austin, Texas
May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 550** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NIXON	HOLZHEAUSER
PATTERSON	RAMSAY
CAIN	TORRES
GALLOWAY	OGDEN
MONTFORD	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the authority of the Railroad Commission of Texas to receive and administer gifts, grants, and donations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 112, Revised Statutes, is amended by adding Article 6447i to read as follows:

Art. 6447i. GIFTS, GRANTS, AND DONATIONS. (a) The commission may apply for, request, solicit, contract for, receive, accept, and administer gifts, grants, and donations of money or other assistance from any source to carry out any commission purpose or power authorized by law.

(b) The commission may not, under Subsection (a) of this section, accept a gift or donation of money or of property from a party in a contested case, as defined in Section 2001.003(1), Government Code, during the period from the inception of the contested case until 30 days after a final order is signed in the contested case.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1513

Senator Cain submitted the following Conference Committee Report:

Austin, Texas
May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1513** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CAIN	ALEXANDER
ARMBRISTER	ALONZO
WEST	BOSSE
HENDERSON	CLEMONS
GALLEGOS	SIEBERT
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain special stops required of motor vehicles at railroad crossings; creating offenses and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 86, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 86. OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN. (a) Whenever any person driving a vehicle approaches a railroad grade crossing, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad if [~~and shall not proceed until he can do so safely when~~]:

(1) a [~~(a) A~~] clearly visible railroad [~~electric or mechanical~~] signal warns [~~device gives warning~~] of the [~~immediate~~] approach of a railroad train;

(2) a [~~(b) A~~] crossing gate is lowered[~~;~~] or [~~when~~] a human flagman warns [~~gives or continues to give a signal~~] of the approach or passage of a railroad train;

(3) the driver is required to stop by:

(A) other law;

(B) a rule adopted under a statute;

(C) an official traffic-control device; or

(D) a traffic-control signal;

(4) a [~~(c) A~~] railroad engine approaching within approximately fifteen hundred (1500) feet of the highway crossing emits a signal audible from such distance and such engine by reason of its speed or nearness to such crossing is an immediate hazard; or

(5) an [~~(d) An~~] approaching railroad train is plainly visible and [~~is~~] in hazardous proximity to such crossing.

(b) The driver of a vehicle required to stop at a railroad grade crossing as provided by Subsection (a) of this section shall remain stopped until the driver is permitted to proceed and it is safe to proceed.

(c) A person who is the driver of a vehicle commits an offense if the person drives the vehicle around, under, or through a crossing gate or a barrier at a railroad crossing while the gate or barrier is closed, being closed, or being opened.

(d) In a prosecution under Subsection (a)(4) of this section, proof that at the time of the offense a railroad train was approaching the grade crossing and that the railroad train was visible from the crossing is prima facie evidence that it was not safe for the driver to proceed.

(e) A person convicted of a violation of this section shall be punished by a fine of not less than $50 or more than $200.

SECTION 2. Section 87, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 87. ALL VEHICLES MUST STOP AT CERTAIN RAILROAD GRADE CROSSINGS. The Texas Department of Transportation [~~State Highway Commission~~] and local authorities with respect to highways under their respective jurisdictions are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs or other standard traffic-control devices thereat. When such stop signs or

other standard traffic-control devices are erected, the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care, and in the exercise of their authority to determine safety hazards existing at grade crossings of streets, roads, highways and other public rights-of-way with railroad track or tracks by the State and all political subdivisions thereof the costs for installation and maintenance of mechanically operated grade crossing safety devices, gates, signs and signals shall be apportioned and paid on the same percentage ratio and in the same proportionate amounts by the State and all political subdivisions thereof as is the presently established policy and practice of the State of Texas and the Federal Government. A person convicted of a violation of this section shall be punished by a fine of not less than $50 or more than $200.

SECTION 3. Section 88, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) A person convicted of a violation of this section shall be punished by a fine of not less than $50 or more than $200.

SECTION 4. Section 89, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) A person convicted of a violation of this section shall be punished by a fine of not less than $50 or more than $200.

SECTION 5. Section 90, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(c) A person convicted of a violation of this section shall be punished by a fine of not less than $50 or more than $200.

SECTION 6. (a) This Act takes effect September 1, 1995.

(b) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 327

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 23, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 327** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS	GOODMAN
WEST	PLACE
MADLA	HIGHTOWER
BROWN	VAN DE PUTTE
MONTFORD	DE LA GARZA
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2766

Senator Turner submitted the following Conference Committee Report:

Austin, Texas
May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2766** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

TURNER	SMITHEE
MADLA	AVERITT
SIBLEY	BERLANGA
PATTERSON	VAN DE PUTTE
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2861

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 25, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2861** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS	GRUSENDORF
HAYWOOD	MADDEN
SIMS	ALLEN
WEST	CARTER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

MEMORIAL RESOLUTION

S.R. 1268 - By Truan: In memory of Lucio Aleman, Jr., of Oklahoma City.

CONGRATULATORY RESOLUTIONS

S.R. 1244 - By Sibley: Recognizing the A. J. Moore High School Fourth Annual All School Reunion in Waco.

S.R. 1246 - By Nelson: Celebrating the centennial of the Ellis County Courthouse in Waxahachie.

S.R. 1247 - By Nelson: Recognizing Dan Eddy of Duncanville, who was recently selected as Grand Prairie Man of the Year.

S.R. 1249 - By Nelson, Leedom: Recognizing Dr. Michael A. Moses, who was recently appointed the Texas Commissioner of Education.

S.R. 1251 - By Truan: Commending San Patricio County Judge Josephine Miller for her contributions to the welfare and development of the county.

S.R. 1252 - By Truan: Commending Jim Wells County Judge L. Arnoldo Saenz for his contributions to the welfare and development of the county.

S.R. 1253 - By Truan: Commending Kleberg County Judge Pete De La Garza for his contributions to the welfare and development of the county.

S.R. 1254 - By Truan: Commending Brooks County Judge Joe B. Garcia for his contributions to the welfare and development of the county.

S.R. 1255 - By Truan: Commending Willacy County Judge Simon Salinas for his contributions to the welfare and development of the county.

S.R. 1256 - By Truan: Recognizing the National Council of La Raza, Inc., for its dedication to promoting the social and economic well-being of Americans of Hispanic descent.

S.R. 1257 - By Cain: Recognizing William Carl Harlan on the occasion of his graduation from Honey Grove High School.

S.R. 1259 - By Rosson: Recognizing the El Paso Arsenal Soccer Club for its accomplishments during the 1994-1995 season.

S.R. 1260 - By Lucio: Recognizing Concepcion "Kino" Camarillo of Brownsville for his contributions to his city and state.

S.R. 1261 - By Ellis: Recognizing Dr. James H. Pickering for his service as president of the University of Houston.

S.R. 1262 - By Ellis: Recognizing Marvene B. Elliott, principal of Riverside Park Elementary School in San Antonio, on the occasion of her retirement.

S.R. 1263 - By Turner: Commending the Texas MATHCOUNTS Team for their outstanding performance at the National MATHCOUNTS Competition.

S.R. 1264 - By Turner: Recognizing Hewitt Midway High School for winning second place in the Conference 4A University Interscholastic League meet.

S.R. 1269 - By Truan: Recognizing Nueces County Judge Richard Martinez Borchard, who was named the "1994 Newsmaker of the Year" by the Corpus Christi Caller-Times.

H.C.R. 223 - (Patterson): Honoring Chelsi Smith of Deer Park, who was named Miss Universe 1995.

H.C.R. 230 - (Moncrief): Commending the members of the Texas Task Force for Tiltrotor Technology.

RECESS

Pursuant to a previously adopted motion, the Senate at 5:37 p.m. recessed until 9:30 a.m. tomorrow for the Local and Uncontested Bills Calendar.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 26, 1995

ECONOMIC DEVELOPMENT — **H.B. 3233, H.B. 1728, H.B. 2858, H.B. 2893**

INTERGOVERNMENTAL RELATIONS — **H.B. 2775, H.B. 3040, H.B. 2509, H.B. 2036, H.B. 1832, H.B. 875**

SIGNED BY GOVERNOR
(May 25, 1995)

S.B. 1196 (Effective September 1, 1995)
H.B. 1295 (Effective September 1, 1995)
S.C.R. 95
S.C.R. 128
S.C.R. 139
S.C.R. 140
S.C.R. 152
H.C.R. 30
H.C.R. 44
H.C.R. 69
H.C.R. 85
H.C.R. 91
H.C.R. 102
H.C.R. 175
H.C.R. 197
H.C.R. 201
H.C.R. 212
H.C.R. 214

(May 26, 1995)

S.B. 60 (Effective September 1, 1995)

SENT TO SECRETARY OF STATE
(May 26, 1995)

H.J.R. 68

SENT TO COMPTROLLER
(May 26, 1995)

H.B. 735
H.B. 815
H.B. 1127